



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 267, 271, and 761

[EPA-HQ-OLEM-2021-0609; FRL-7308-01-OLEM]

[RIN 2050-AH12]

Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes certain amendments to the electronic manifest (e-Manifest) regulations concerning the e-Manifest program and system. Specifically, EPA is proposing changes to manifest regulations for shipments of hazardous waste that are exported for treatment, storage, and disposal. These proposed changes follow EPA's e-Manifest User Fee final rule, promulgated in January 2018, which stated that the scope of the e-Manifest requirements and system would not extend to U.S. export shipments of hazardous wastes until the Agency determined, through separate rulemaking, which entity in the export process would be responsible for submitting export manifests to the e-Manifest system and paying the associated user fees. EPA is also proposing regulatory changes to the RCRA hazardous waste export and import shipment international movement document-related requirements to more closely link the manifest data with the international movement document data. In addition, EPA is proposing regulatory amendments to three manifest-related reports (i.e., discrepancy, exception, and unmanifested waste reports) and is requesting public comment on changes to the manifest form. EPA is also requesting public comment with respect to how the Agency can begin to integrate biennial reporting requirements with e-Manifest data. Additionally, EPA is proposing conforming regulatory changes to the Toxic Substances Control Act (TSCA) manifest regulations for polychlorinated biphenyls (PCB) wastes. Finally, the Agency is proposing to

make technical corrections to fix typographical errors in the e-Manifest and movement document regulations.

DATES: Comments must be received on or before **[INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before **[INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0609, by one of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- Hand Delivery: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

Additional instructions on commenting or visiting the docket, along with more

information about dockets generally, is available at <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Bryan Groce, Program Implementation and Information Division, Office of Resource Conservation and Recovery, (202) 566-0339; email address: groce.bryan@epa.gov or Tess Fields, Program Implementation and Information Division, Office of Resource Conservation and Recovery, (202) 566-0328; email address: fields.tess@epa.gov. In addition, please refer to EPA's e-Manifest webpage for further information, www.epa.gov/e-manifest.

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I. General Information

A. List of Acronyms used in this action

<u>Acronym</u>	<u>Meaning</u>
ACH	Automated Clearinghouse
AES	Automated Export System
AOC	Acknowledgment of Consent (issued by EPA)
API	Application Programming Interface
BR	Biennial Report
CBI	Confidential Business Information
CBP	United States Customs and Border Protection
CFR	Code of Federal Regulations
CROMERR	Cross-Media Electronic Reporting Rule
CRT	Cathode Ray Tube
DOT	U.S. Department of Transportation
EEl	Electronic Export Information
EPA	United States Environmental Protection Agency
FR	<i>Federal Register</i>
GM	EPA's Waste Generation and Management Form
ICR	Information Collection Request
IT	Information Technology

ITDS	International Trade Data System
JSON	JavaScript Object Notation
LQG	Large Quantity Generator
MTN	Manifest Tracking Number
NAICS	North American Industrial Classification System
NTTAA	National Technology Transfer and Advancement Act
OI	EPA's Off-site Identification Form
OLEM	Office of Land and Emergency Management
O&M	Operation and Maintenance
OMB	Office of Management and Budget
PCB	Polychlorinated biphenyl
PPC	EPA's Paper Processing Center
QA	Quality Assurance
RCRA	Resource Conservation and Recovery Act
RCRAInfo	Resource Conservation and Recovery Act Information System
RFA	Regulatory Flexibility Act
SLAB	Spent Lead-Acid Battery
SQG	Small Quantity Generator
TSCA	Toxic Substances Control Act
TSDF	Treatment, Storage, and Disposal Facility
UMRA	Unfunded Mandates Reform Act
WC	Waste Characteristic
WIETS	Waste Import Export Tracking System
WR	EPA's Waste Received from Off-site Form

B. Does this action apply to me?

The hazardous waste manifest program affects approximately 100,319 federally regulated entities and an equal or greater number of entities handling state-only regulated wastes in at least 750 industries. These industries are involved in the off-site shipping, transporting, and receiving of several million tons of wastes that are required under either federal or state regulation to use the RCRA hazardous waste manifest. EPA estimates that these entities currently use between 1,785,405 hazardous waste manifests (EPA Form 8700–22) and continuation sheets (EPA Form 8700–22A) annually to track RCRA hazardous wastes, TSCA polychlorinated biphenyls (PCB) wastes, and state-only regulated wastes from generation sites to destination facilities designated on a manifest for treatment, storage, or disposal. The affected entities include hazardous waste generators, hazardous waste transporters, owners or operators of treatment, storage, and disposal facilities (TSDFs), as well as the corresponding entities that handle state-only regulated wastes and PCB wastes subject to tracking with the RCRA manifest.

Additionally, this proposed rule would affect entities (including exporter, importer,

disposal facility owner/operator, or recovery facility owner/operator) who are involved in transboundary movements of hazardous waste for recovery or disposal that are subject to the manifest regulations to track their import or export shipments in the United States, or to the international movement document requirements to track their import or export shipments both inside and outside of the United States.

Finally, this proposed rule would affect entities who would be required to complete any of the following manifest-related reports: (1) an Exception Report when the generator has not received a final manifest from the receiving facility; (2) a Discrepancy Report when the materials received do not match with the quantities or types of materials indicated as being shipped by generators; or (3) an Unmanifested Waste Report when wastes that should have been manifested arrive at a facility without a manifest.

Potential affected entities include, but are not limited to:

Industrial Sector	NAICS Code(s)
Agriculture, Forestry, Fishing, and Hunting	11
Mining	21
Utilities	22
Construction	23
Manufacturing	31-33
Wholesale Trade	42
Retail Trade	44-45
Transportation and Warehousing	48-49
Information	51
Waste Management & Remediation Services	562
Public Administration	92

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware could potentially be regulated by this action. Other

types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in the title 40 of the Code of Federal Regulations (CFR) parts 262, 263, 264, 265, and 761. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

C. What action is the Agency taking?

EPA is proposing regulatory amendments to the manifest regulations to require waste handlers who export manifested hazardous waste shipments out of the U.S. to submit the export manifests to EPA and pay the requisite user fee to process them. If the proposed regulations are finalized, export manifests would be collected in the e-Manifest system and the exporters who submit these manifests would be invoiced for those submissions. With respect to the international movement document requirements, EPA is proposing changes to allow international movement document confirmations to link to RCRA manifest tracking for export and import shipments. EPA is also proposing regulatory changes to integrate existing Discrepancy Reports, Exception Reports, and Unmanifested Waste Reports into the e-Manifest system. The proposed changes would allow entities to leverage the e-Manifest system to complete these reports electronically. The Agency is also proposing conforming changes to the TSCA manifest regulations for PCB wastes to align with the RCRA manifest regulations and the e-Manifest program, including the adoption of the e-Manifest rules for PCB wastes required to be tracked via a manifest.

Finally, EPA is requesting additional comment on certain manifest forms changes proposed in the February 2019 e-Manifest Information Collection Request (ICR) public notice (84 FR 2854, February 8, 2019). EPA proposed modifications to the manifest form and continuation sheet to enhance the quality of shipment data reported on the manifest (both paper and electronic), including shipment data for import and export waste shipments. However, commenters in response to the February 2019 public notice raised issues, including those related

to biennial reports, that require further inquiry and additional public comment through this notice as the Agency makes decisions concerning the e-Manifest system.

D. What is the Agency's authority for taking this action?

The authority to propose this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901, 6906 et. seq., 6912, 6921–6925, 6937, and 6938, and further amended by the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, section 6939g, and in sections 6, 8, 12, 15, and 17 of the Toxic Substances Control Act, 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

E. What are the incremental costs and benefits of this action?

EPA prepared an economic analysis of the potential costs and benefits associated with this proposed action. The *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* (RIA), is available in the docket for this rulemaking. EPA estimates that the proposed regulatory changes will decrease the aggregate burden across all entities manifesting waste by \$7.50 million, annually. However, this rulemaking consists of a series of provisions that affect a series of overlapping regulated universes differently (see Chapter 2 of the RIA). This figure is net of the increase in costs expected among importers and exporters of approximately \$221,000. For entities manifesting waste domestically, the proposed revisions are expected to create a cost savings of approximately \$7.73 million, based on transitions to automated systems for exception and discrepancy reporting and the removal of the requirement for receiving facilities to mail manifests to unregistered generators. In contrast, exporters and importers would face an increase in aggregate costs primarily driven by manifest fees that would be assessed on export shipments. See RIA Exhibit 3-10 for a summary of annual costs across all regulatory changes.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0609, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

III. Background

A. e-Manifest Act and System Launch

With the enactment of the Hazardous Waste Electronic Manifest Establishment Act in

2012, Congress provided EPA authority to establish the national electronic hazardous waste manifest system to track hazardous waste shipments electronically. The Act also provided EPA authority to adopt regulations that (1) allow the Agency to accept electronic manifests originated in the e-Manifest system as the legal equivalent to paper manifests; (2) require manifest users to submit paper copies of the manifest to the system for data processing; (3) collect manifests in the e-Manifest system for waste shipments required to be shipped using a RCRA manifest under federal or state law; and (4) set up user fees to offset the costs of developing and operating the e-Manifest system.

The goal of the Act was for EPA to provide manifest users a more modern, efficient electronic manifest process option as compared to the traditionally paper-intensive process to track federally regulated or state-only regulated waste shipments requiring a RCRA manifest for transportation. Pursuant to the Act, EPA launched the national system on June 30, 2018, as a module component of the existing Resource Conservation and Recovery Act Information System (RCRAInfo).¹ Through the e-Manifest system, manifest users can create, edit, retrieve, sign, and store manifests electronically as well as retrieve status information on manifests.

B. 2014 One Year Rule

EPA published the first e-Manifest final rule, also known as the One Year Rule, on February 7, 2014 (79 FR 7518). The One Year Rule established the legal and policy framework for the use of electronic manifests. First, that rule explained that electronic manifests obtained, completed, transmitted, and signed in the national e-Manifest system in accordance with the electronic formats announced in the rule are considered the legal equivalent of paper manifests signed with conventional ink signatures. Further, wherever the existing federal and state regulations require a RCRA paper manifest to be supplied, signed, used or carried with a hazardous waste shipment, the execution of an electronic manifest in the national e-Manifest

¹ The RCRAInfo Industry Application provides the mechanism by which a site that generates and/or manages RCRA Subtitle C hazardous waste may submit information to their regulator (typically a state environmental Agency).

system is deemed to comply with the requirements to obtain, sign, carry, or otherwise use the hazardous waste manifest.²

Second, the One Year Rule explained that if RCRA-manifested shipments are tracked using paper manifest forms, then the receiving facilities must submit the top copies of those manifests to EPA. The rule explained that receiving facilities have a few options for submitting the top manifest copy of the RCRA manifest to EPA: electronically submitting manifests directly in the e-Manifest system, uploading manifest data plus a digital image of a paper manifest from an industry system, submitting a digital image of a paper manifest, and mailing in a hard, top copy of the paper manifest.³

Third, the One Year Rule explained that the submission of electronic manifests using the national e-Manifest system is currently governed by the provisions of EPA's Cross-Media Electronic Reporting Rule (CROMERR), which addresses direct reporting of environmental information to EPA. Compliance with CROMERR requirements for direct electronic reporting is a condition that must be met to obtain and execute a valid electronic manifest. Finally, the One Year Rule announced the types of electronic documents that can be completed and submitted electronically to the e-Manifest system. These document types are limited to the standard electronic formats created by EPA as the authorized substitute for EPA Form 8700-22 (Manifest) and EPA Form 8700-22A (Continuation Sheet). The rule, however, did not address which entity should submit the manifest to EPA and did not address how the Agency would establish and collect user fees, leaving those issues to be considered in EPA's second rulemaking

² Although electronic manifests will satisfy the U.S. Department of Transportation's hazardous materials regulations on retention of shipping paper records, DOT's regulations continue to require a printed copy of the electronic manifest on the transport vehicle. Therefore, e-Manifest users must for the foreseeable future produce one paper copy of the manifest to carry on the transport vehicle.

³ The One Year Rule offered three options for submitting the top copy of paper manifests to the system. These options included submitting hardcopies, image files, and data uploads plus image files at system launch. However, the current manifest submission requirement at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B) will eliminate the option to submit a hard copy of the information contained in the top copy (Page 1) of a paper manifest (EPA Form 8700-22) and continuation sheet (EPA Form 8700-22A) to EPA beginning June 30, 2021. On that date, the top copy of manifest forms is limited to uploading manifest data and a digital image of a paper manifest or a digital image of a paper manifest.

effort, which the Agency completed in 2018.

C. 2018 User Fee Rule

Section 2(c) of the e-Manifest Act authorizes EPA to impose and collect reasonable service fees necessary to pay the costs of implementing the e-Manifest system, including any costs incurred in collecting and processing data from paper manifests submitted to the system. While the One Year Rule addressed the fundamental scope and policy issues related to the use of electronic manifests, the rule did not address user fees to any significant extent. EPA explained in the One Year Rule, that the development of an e-Manifest user fee methodology and fee schedules would be undertaken as a separate rulemaking. EPA published this separate rule, the User Fee final rule, on January 3, 2018 (83 *FR* 420). This final rule established the user fees and other actions necessary to implement the system.

First, pursuant to the e-Manifest Act, the final rule established the methodology that EPA uses to set and revise user fees to recover the full costs of an electronic manifest system. This includes costs incurred in developing, operating, maintaining, and upgrading the national e-Manifest system.

Second, the final rule also implemented a process that allows for hybrid manifests to assist the generators in transitioning to fully electronic manifests. A hybrid manifest begins as a paper manifest at the generator site and transitions to an electronic manifest with the initial transporter and through to the receiving facility.

Third, because the user fees are required to reach full cost recovery, the rule explained that some manifests have greater processing costs than others and as a result, fees will differ depending upon the type of manifest submitted. Thus, EPA published multiple user fees tailored to the type of manifest submission (i.e., fully electronic/hybrid, image upload plus data file, image only upload, and mailed paper submission). Fully electronic and hybrid manifests necessitate the least amount of processing and Quality Assurance (QA) related costs, while paper manifests require greater processing costs for data key entry and QA activities, depending upon

the mode of submission (i.e., mail, data file upload, or image file) to the system.

Fourth, the rule announced EPA's decision to charge user fees on a per manifest basis. The billable event is the submission of the information contained in the final, top copy of the manifest to the system by the receiving facility. EPA decided to collect user fees from receiving facilities rather than from generators. Collecting user fees from generators would entail the establishment of more than 100,000 payment accounts for the federal waste and state-only regulated waste generators, which would have significantly increased costs for invoicing and collection activities. By contrast, collecting user fees from several hundred receiving facilities results in far greater administrative efficiency.

Finally, the rule announced the date – June 30, 2018 – on which EPA would launch the e-Manifest system, begin receiving electronic manifests and paper manifest copies, and begin collecting user fees for receipt of the manifest information. The rule also clarified that the implementation date was limited to the collection of domestic and import shipments that are required to be shipped under a manifest under either federal or state law. At that time, EPA had not provided an opportunity for public comment regarding how exporters or other handlers involved with export shipments would meet obligations under the e-Manifest system and intended to leave that issue to this separate rulemaking.

D. 2019 ICR

In compliance with the Paperwork Reduction Act of 1995, EPA developed an information collection request (ICR), titled “*Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (EPA ICR No. 2050-0039)*,” for the e-Manifest rules and e-Manifest system. This ICR provides an overview of the collection for information required under the e-Manifest system and estimates the cost and time for manifest users to respond to the requirements. EPA solicited public comments on this ICR through an announcement in the *Federal Register* on February 8, 2019 (84 FR 2854). To further reduce the administrative burden of the e-Manifest rule and system on

manifest users, EPA proposed changes to the manifest forms. Specifically, EPA proposed and solicited comments and information to: (1) improve the precision of waste quantities and units of measure reported in Items 11 and 12 of the hazardous waste manifest (both paper and electronic), respectively; (2) enhance the quality of international shipment data reported on the manifest; and (3) assist EPA with integrating e-Manifest and Biennial Report (BR) requirements. EPA received no comments on the ICR's draft hourly burden or cost estimates. However, EPA received ten comments from industry and state stakeholders regarding the proposed manifest form changes detailed in the notice. A few issues raised by commenters in response to the February 2019 public notice prompted the Agency to pursue further engagement with stakeholders before making final decisions concerning the RCRA hazardous waste manifest form and e-Manifest system. Therefore, under today's action EPA is soliciting additional comment on the proposal regarding enhancing the quality of international shipment data on the manifest. EPA is also requesting additional comment on the proposal to improve the precision of waste quantities and units of measure reported in Items 11 and 12 of the hazardous waste manifest (both paper and electronic) as well as to add new data fields on the manifest to integrate e-Manifest and the waste receipt form for the hazardous waste BR (EPA form 8700-13A/B).

E. June 2019 Advisory Board Meeting

EPA convened the e-Manifest Advisory Board to hold a public meeting, entitled *"Increasing Adoption of the e-Manifest system,"* on June 18-20, 2019.⁴ The primary goals of the Advisory Board meeting were to: (1) Identify the main challenges generators and other waste handlers face when using fully electronic manifests; and (2) obtain advice from the Board on ways to increase adoption of electronic manifests. EPA requested input from the Board on identifying the main challenges generators, transporters, and receiving facilities face with using

⁴ EPA's background paper, related supporting materials, Final e-Manifest Advisory Report/Meeting Minutes for the June 2019 FAC meeting (i.e., the Board's recommendations), and EPA's responses to them are available in the public docket (www.regulations.gov, Docket no. EPA-HQ-OLEM-2019-0194).

fully electronic manifests and possible solutions to the challenges. To incentivize greater e-Manifest adoption by waste handlers, the Board recommended EPA integrate the Biennial Reports, Discrepancy Reports, Exception Reports, and Unmanifested Waste Reports into the e-Manifest system.

IV. Detailed Discussion of Proposed Rule

A. What is EPA Proposing for International Shipments of Hazardous Waste?

This action considers regulatory amendments to the manifest regulations for hazardous waste export shipments. The proposed amendments would require export manifests to be collected in the e-Manifest system. If finalized, the following entities involved in export shipments would be responsible for the submission of the manifest to EPA's e-Manifest system and the payment of user fees: (1) an exporter who is required to originate the manifest for a shipment of hazardous waste; or (2) any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import. The proposed amendments are discussed below in greater detail under preamble section IV.A.3.

This action also addresses comments on several proposed changes to the manifest form and continuation sheet for transboundary shipments and requests additional comment on certain manifest form changes proposed in the *Federal Register* on February 8, 2019 (84 FR 2854). EPA considered changes to the manifest forms as part of the renewal of the Information Collection Request (ICR) for the form (OMB Control Number 2050-0039) and solicited public comment on this ICR through that FR notice. The proposed changes would require exporters and importers to record the hazardous waste stream consent numbers for export and import shipments in new, distinct fields on the continuation sheet. In addition, the proposed changes would require the exporter's EPA ID number to be recorded in a designated field on the continuation sheet, if the exporter is a recognized trader located separate from the site initiating the export shipment. Currently, there is no space on the manifest for an exporter that is not the site initiating the export shipment to record this information. The proposed manifest form changes related to

hazardous waste export and import shipments are discussed below in greater detail under preamble section IV.A.4. Finally, this action proposes changes under 40 CFR part 262 subpart H for the manifest and movement document requirements, and details technical corrections and conforming amendments to requirements for transboundary shipments. The proposed changes to the manifest and movement requirements are discussed below in greater detail under preamble sections IV.A.5 and IV.A.6, respectively.

1. Background on current manifest and movement document requirements for international shipments

Current RCRA regulations require exporters and importers of hazardous waste shipments to comply with the manifest and movement document regulations under 40 CFR part 262, subpart H. For the hazardous waste manifest, current export and import regulations at §§ 262.83(c) and 262.84(c) require exporters and importers, respectively, to record export or import data on the manifest. For hazardous waste shipments departing the U.S., the exporter of the hazardous waste shipment must comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that in lieu of the name, site address, and EPA ID number of the designated facility, the exporter must: enter the name and site address of the foreign receiving facility; check the export box and enter the U.S. port of exit (city and state) from the United States in Item 16; and record the waste stream consent number for each waste listed on the manifest. If the exporter is the generator or the site from where the export manifest is initiated, the exporter's information will be listed in Item 1 and Item 5. However, if the exporter is a recognized trader whose physical location is separate or different than the site initiating the export shipment, then the exporter information is not required to be entered on the manifest.

For hazardous waste shipments entering the U.S., the manifest regulations for importers are similar to the requirements for exporters. The importer must also comply with manifest requirements at 40 CFR 262.20 through 262.23, and the importer is considered the RCRA generator whose EPA ID number will be entered in Item 1. Additionally, the importer's information must be entered in Item 5 except that the importer must enter the name and site

address of the foreign facility on the right side of Item 5 of the manifest in lieu of entering its physical site address, and the importer must also enter the name, site address, and EPA ID number of the domestic designated facility in Item 8 of the manifest. If the domestic designated facility is also the importer, its information will be entered in both locations on the manifest. Finally, the importer must check the import box and enter the U.S. port of entry (city and state) into the United States in Item 16.

Both hazardous waste export and import regulations require that consent numbers be entered on the manifest. For export shipments, current export regulations at 40 CFR 262.83(c)(3) require the exporter to record the consent numbers on the manifest for each waste stream listed in Item 9b of the manifest when it initiates the manifest. Similarly, import-related regulations at 40 CFR 264.71(a)(3)(i) require U.S. facilities receiving hazardous waste subject to 40 CFR part 262, subpart H from a foreign entity to record the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest. Currently, EPA recommends listing the consent numbers in Item 14, “Special Handling Instructions and Additional Information,” on the paper manifest form due to the lack of dedicated fields for listing such numbers.

In addition, the RCRA hazardous waste regulations at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B) require domestic destination facilities receiving import shipments to submit the import manifests to the e-Manifest system and pay the requisite fees for their processing and data capture in the e-Manifest system. The current hazardous waste regulation at 40 CFR 263.20(g)(4)(i) also requires transporters who transport hazardous waste out of the U.S. to send copies of paper manifests for export shipments to the e-Manifest system. Currently, however, the manifest data from export manifests is not captured in the e-Manifest system.⁵

⁵ EPA promulgated the Export Import Revisions Final rule on November 4, 2016, which established the current requirement for the transporter to send paper copies of export manifests to the e-Manifest system. While transporters are currently submitting export manifests to EPA, the paper processing center is not entering the data from them into

The current export and import regulations at §§ 262.83(d) and 262.84(d) require exporters and importers, respectively to record export or import data on the international movement document for all exported or imported hazardous wastes that are required to be manifested or managed under the alternate management standards of 40 CFR Parts 266 (e.g., spent lead-acid batteries (SLABs)) or 273 (i.e., universal wastes). For export hazardous waste shipments, the exporter must: enter the information listed in 40 CFR 262.83(d)(2)(i)-(xii) when initiating the international movement document; ensure through use of contract terms that the international movement document accompanies the shipment from the site in the U.S. where the export shipment is initiated to the foreign receiving facility; and ensure that appropriate signatures are entered for each custody transfer from shipment initiation to the foreign receiving facility per 40 CFR 262.83(d)(2)(xiii)-(xiv). The foreign receiving facility must send a copy of the signed international movement document within three days of shipment delivery to: the exporter, the importing country's competent authority, and any transit country(ies)'s competent authority(ies) to confirm receipt of the shipment per 40 CFR 262.83(d)(2)(xv). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future *Federal Register* notice⁶, the exporter must have contract terms requiring the foreign facility to send an electronic copy of the signed international movement document at the same time to EPA using the Waste Import-Export Tracking System (WIETS) or its successor system.

Lastly, the exporter must have contract terms requiring the foreign receiving facility to send a copy of the signed and dated confirmation of recovery or disposal as soon as possible, but no later than thirty days after completing recovery or disposal of the waste in the shipment and

the e-Manifest system. EPA did not establish a regulation in the June 2018 User Fee Final rule requiring transporters, nor any other entity involved in the export shipment, to pay the requisite user fee for processing of the export manifests. EPA is pursuing a new regulatory change under today's proposed rule to address which entity involved in the export supply chain is best suited to submit export manifests to EPA and pay the requisite user fee for the processing of export manifests.

⁶ As part of the November 28, 2016, import-export revisions final rule (81 FR 85696), EPA defined two dates that would be established and announced via future *Federal Register* notices. One was the AES filing compliance date, which was established in the *Federal Register* on August 29, 2017 (82 FR 41015) to be December 31, 2017. The other is the electronic import-export reporting compliance date that has yet to be established.

no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import per 40 CFR 262.83(f)(5). If the initial foreign receiving facility performed interim operations on the waste shipment, the contract terms must also require that the initial foreign receiving facility obtain a copy of the signed and dated confirmation of recovery or disposal from the subsequent foreign facility that performed the final operation on the waste shipment and promptly forward the copy to the exporter and to the country of import, per 40 CFR 262.83(f)(6). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future *Federal Register* document, the exporter must have contract terms requiring the foreign facility to send an electronic copy of each signed and dated confirmation of recovery or disposal at the same time to EPA using WIETS or its successor system.

For import waste shipments being shipped to U.S. receiving facilities, the importer must similarly ensure through contract terms that the information listed in 40 CFR 262.84(d)(2)(i)-(xii) is included on the international movement document when the foreign exporter initiates the movement document. Additionally, the contract must require that the movement document accompanies the shipment from the foreign site where the import shipment is initiated to the U.S. receiving facility, with appropriate signatures entered for each custody transfer per 40 CFR 262.84(d)(2)(xiii)-(iv). Finally, the U.S. receiving facility must send a copy of the signed movement document within three days of shipment delivery to the foreign exporter, to the exporting country's competent authority, and to any transit country(ies)'s competent authority(ies) to confirm receipt of the shipment per 40 CFR 262.84(d)(2)(xv). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future *Federal Register* document, the U.S. receiving facility must send an electronic copy of the signed movement document at the same time to EPA using WIETS or its successor system. Lastly, the U.S. receiving facility must send a copy of the signed and dated confirmation of recovery or disposal as soon as possible, but no later than thirty days after

completing recovery or disposal on the waste in the shipment and no later than one calendar year following the receipt of the waste, to the foreign exporter and to the competent authority of the country of export per 40 CFR 262.84(g)(1). If the initial U.S. receiving facility performed interim operations on the waste shipment, the U.S. receiving facility must obtain a copy of the signed and dated confirmation of recovery or disposal from the subsequent U.S. facility that performed the final operation on the waste shipment and promptly forward the copy to the foreign exporter and to the country of export per 40 CFR 262.84(g)(2). Just as with the copy of the signed movement document, for shipments made after the electronic import-export reporting compliance date that EPA will establish in a future *Federal Register* notice, the U.S. facility must send an electronic copy of each signed and dated confirmation of recovery or disposal at the same time to EPA using WIETS or its successor system.

2. Potential manifest changes discussed in February 8, 2019, ICR proposal for export and import shipments

EPA proposed and requested comment on several changes to the hazardous waste manifest form and continuation sheet as part of the renewal of the Information Collection Request (ICR) for the form (OMB Control Number 2050-0039). First, to enhance the quality of data recorded on the manifest and continuation sheet (both paper and electronic), EPA proposed new form data fields to allow: 1) the hazardous waste stream consent numbers for export and import shipments to be recorded in a separate, distinct field on a manifest (See 84 FR 2854 and 2855); and 2) the exporter's EPA ID Number to be captured on the manifest, if the exporter is a recognized trader located separate from the site initiating the export shipment (See 84 FR 2854 and 2856). EPA explained in the proposal that the addition of a separate data field to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual entry of data from paper export and import manifests as the manifest would more clearly list the consent number for each waste stream. Further, the addition of this field would also facilitate the retrieval of export and import manifest data from the e-Manifest system for all manifested export

and import shipments. The February 2019 *Federal Register* notice (84 FR 2854) also explained that the addition of the exporter's EPA ID number would be necessary, if EPA decided that the exporter is the party best suited to be billed for export manifests collected in the e-Manifest system; the current manifest does not provide adequate information to invoice exporters.

Specifically, EPA requested comment on whether: 1) space should be added to Item 16 (i.e., the International Shipments field) of the manifest to accommodate consent numbers corresponding to each of the waste streams listed in Item 9 of the manifest; or 2) the continuation sheet should be revised to accommodate consent numbers, the primary exporter's EPA ID number, if necessary, and other international shipment information currently recorded in Item 16 of the manifest.

Finally, in addition to the revisions to the continuation sheet discussed above, EPA also requested comment on whether the continuation sheet should be expanded to capture all international shipment data recorded on the manifest and movement document and ultimately captured in the e-Manifest system.

3. What is EPA proposing with respect to submitting export manifests to EPA's e-Manifest system?

EPA intends to collect export manifests in the e-Manifest system. Like user fees for domestic manifests, the fees for export manifest submissions would be assessed on a per manifest basis. User fees would be assessed upon the submission of the final manifest containing the signature of the transporter who transported the waste shipment out of the United States. The regulatory amendments discussed in this section of the preamble would require the exporter to submit the top copies of both the manifest and continuation sheet to EPA and pay the requisite processing fee for the submissions.

Although the transporter, under current regulations, closes out the export manifest, EPA believes the exporter is better suited to submit the manifest and continuation sheet to the system for several reasons. First, the exporter is primarily responsible for the arrangement of the

shipment exiting the U.S. and therefore has firsthand knowledge of the export shipment. Besides submitting the electronic notifications of intent to export to EPA in WIETS, the exporter: receives an acknowledgement of consent (AOC) from EPA documenting consent from the foreign country to receive the export shipment, prepares the manifest for the export shipment if required, prepares the movement document, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) operated by U.S. Customs and Border Protection (CBP), receives copies of the signed movement documents and confirmations of recovery or disposal from the foreign receiving facility, submits exceptions reports to EPA as needed, and submits an export annual report listing details concerning all export shipments made during the previous calendar year.

There are fewer exporters than transporters in the hazardous waste management industry and they are required to be domiciled in the United States. In contrast, a foreign transporter that has obtained an EPA ID number to carry manifested hazardous waste in the U.S. may not be domiciled in the United States. As a result, EPA believes it would be more practical and efficient administratively to focus fee collections and payments in the system on the several hundred exporters rather than working to allow foreign transporters access to the system. Traditionally in other EPA programs, foreign entities have posed regulatory challenges including requirements to post bonds, provide foreign immunity waivers, and special registration procedures. There are also additional challenges verifying the identity of foreign users for electronic signatures as the current EPA methods are designed to be used in the United States. Therefore, under this proposed rule, exporters would submit the manifest to EPA's e-Manifest system and pay the appropriate per manifest fee to EPA for each export manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF (Fees for the Electronic Hazardous Waste Manifest Program) of part 265.

Accordingly, EPA is proposing several regulatory amendments to the manifest provisions

under 40 CFR 262.83 and 263.20 for hazardous waste exports to allow hazardous waste or other regulated waste handlers who must use the manifest for tracking export shipments to electronically complete, provide, sign, transmit, and store EPA Form 8700-22 (manifest) and EPA Form 8700-22A (continuation sheet) in the e-Manifest system in accordance with the authorized electronic formats announced in the February 2014 One Year Rule.

First, EPA's proposal revises 40 CFR 262.83(c) by adopting the existing manifest provisions at §§ 262.20(a)(3) and 262.24 for electronic manifest use and the electronic signature requirements at § 262.25 for export manifests. If these provisions are finalized as proposed, a person exporting a shipment out of the U.S. (i.e., a generator or a recognized trader located separate from the site initiating the shipment) may, in lieu of using a paper manifest form, use an electronic manifest to track the export shipment within the United States. These electronic manifests would be considered the legal equivalent of paper manifests signed with conventional ink signatures. EPA notes that use of electronic manifests is voluntary and therefore exporters could continue to track export shipments using the existing paper forms under the proposal. If an export shipment was initiated by the initial transporter under a hybrid manifest in accordance with § 262.24(c), then an exporter would also be required to complete and sign that manifest electronically in the system.

Second, EPA is proposing the addition of new provisions under § 262.83. These would require an exporter to submit the top copy of a manifest form and continuation sheet (whether paper or electronic) to EPA for processing, in accordance with the proposal for export shipments described in this section of the preamble. The new provisions would also require the exporter to pay the requisite processing fee for the submission using the existing fee provisions under 40 CFR Part 265 subpart FF. Under today's rule, EPA is proposing new paragraphs (c)(4) through (c)(8) under § 262.83(c). If finalized, an exporter who elects to use an electronic manifest and continuation sheet for an export shipment, would be required to complete, sign, and submit the manifest and continuation sheet electronically in the e-Manifest system for the waste shipment

within 30 days of receipt of the electronic manifest signed by the last transporter who carried the export shipment to a U.S. seaport for loading onto an international carrier or to a U.S. road or rail port of exit.

If the waste shipment was transported within and then exited the U.S. under a paper manifest and continuation sheet, the exporter would submit images of the paper forms, or uploaded data plus images of the paper forms, to EPA. Upon receipt of image files of a paper manifest and continuation sheet, EPA's paper processing center (PPC) would process the manifests, and the manifest data for the export shipment would be captured in the e-Manifest system.

New §262.83(c)(4) would generally provide an exporter the same options as a U.S. receiving facility to submit the original paper manifests to the system, with one exception. Exporters will not be afforded an option to mail in paper manifests to EPA's e-Manifest system. Prior to June 30, 2021, EPA had accepted manifest data from final manifest copies submitted by U.S. receiving facilities using several modes of delivery. These options included submission of a paper hard copy; image upload of the manifest copy; manifest data upload (e.g., JSON file) plus image upload of the manifest copy; or an electronic manifest (i.e., fully electronic or hybrid manifest). However, per current regulation at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B), beginning June 30, 2021, U.S. receiving facilities, and therefore exporters, will be limited to submitting paper manifests and continuation sheets via image upload or data plus image upload to EPA. Both U.S. receiving facilities and exporters would also have the option to submit electronic manifests to the system.

Third, EPA is proposing to adopt the fee provisions of the electronic hazardous waste manifest program under 40 CFR part 265 subpart FF (40 CFR 265.1300, 265.1311, 265.1312, 265.1313, 265.1314, 265.1315, and 265.1316) for hazardous waste export shipments. EPA finalized these provisions in the User Fee Final Rule (83 FR 420, January 3, 2018) and utilizes them for domestic receiving facilities of hazardous waste and other federal or state regulated

wastes. If finalized, exporters of a waste shipment subject to the manifest requirements would be expected to make payments to EPA for manifest activities conducted during the prior month per § 265.1314. Per § 265.1311, EPA would impose a per manifest fee for each manifest submitted to the system based on the type (paper or electronic) and mode of submission (data upload, image file upload, or electronic). EPA would use the fee formula and methodology and fee revisions described at §§ 265.1312 and 265.1313, respectively, to calculate the manifest fees based on exporters' manifest activities in the system. The mathematical expression of the Marginal Cost Differentiated Fee Option (§§ 264.1312(a) and 265.1312(a)), as revised per Section V.C.2 of the preamble, is as follows:

$$Fee_i = \left(\frac{\text{System Setup Cost}}{\text{Years} \times N_t} \right) + \left(\text{Marginal Cost}_i + \frac{\text{O\&M Cost}}{N_t} \right) \times (1 + \text{Indirect Cost Factor})$$

$$\text{System Setup Cost} = \text{Procurement Cost} + \text{EPA Program Cost}$$

$$\begin{aligned} \text{O\&M Cost} = & \text{Electronic System O\&M Cost} + \text{Paper Center O\&M Cost} + \\ & \text{Help Desk Cost} + \text{EPA Program Cost} + \text{CROMERR Cost} + \\ & \text{LifeCycle Cost to Modify or Upgrade eManifest System Related Services} \end{aligned}$$

Where:

$$\begin{aligned} \text{System Setup Cost} = & \text{Procurement Cost} + \text{EPA Program Cost} \\ \text{O\&M Cost} = & \text{Electronic System O\&M Cost} + \text{Paper Center O\&M Cost} + \end{aligned}$$

$$\text{Help Desk Cost} + \text{EPA Program Cost} + \text{CROMERR Cost} +$$

$$\text{LifeCycle Cost to Modify or Upgrade e – Manifest System Related Services}$$

Fee_i represents the per manifest fee for each manifest submission type “i” and N_t refers to the total number of manifests completed in a year.

User fees are refreshed for each of the two years following the issuance of a new fee schedule. The table below lists the user fees for fiscal years 2022 and 2023 (October 1, 2021, through September 30, 2023) for the e-Manifest system. The FY 2022/2023 user fees for scanned image uploads and data plus image uploads for paper manifests are set at \$20 and \$13,

respectively. The FY2022/2023 user fees for electronic manifest submissions (including hybrid manifests) are set at \$8:

Manifest Submission Type	Fee per Manifest
Scanned Image Upload	\$20.00
Data + Image Upload	\$13.00
Electronic Manifest (Fully Electronic & Hybrid)	\$8.00

These user fees are set based on the manifest usage and processing costs for each manifest type. As mentioned in today’s preamble at V.C, as of June 30, 2021, EPA no longer accepts mailed paper manifests for manifest processing and data entry into the e-Manifest system. Instead, receiving facilities must submit paper manifests as either a scanned image upload or data plus image upload. EPA reiterates there are no user fees for mailed paper manifests since the e-Manifest PPC will no longer accept them for processing into the e-Manifest system.

EPA notes since fee schedules are announced for each of the two years following the issuance of the new fee schedule, the Agency has also included two adjusters to the fee formula methodology. The first fee adjuster, known as the “inflation” adjuster, accounts for inflationary effects between the first and second years of each fee schedule. Per §§ 264.1313(b) and 265.1313(b), the inflation adjuster formula is as follows:

$$Fee_{iYear\ 2} = Fee_{iYear\ 1} \times (CPI_{Year2-2}/CPI_{Year2-1})$$

Where $Fee_{iYear\ 2}$ is the Fee for each type of manifest submission “*i*” in Year 2 of the fee cycle; $Fee_{iYear\ 1}$ is the Fee for each type of manifest submission “*i*” in Year 1 of the fee cycle; and $CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

The second fee adjuster, known as the “revenue recapture” adjuster, targets recapturing revenue that was lost on account of imprecision in estimating the numbers and types of manifest submissions that would be processed by the e-Manifest system. Unlike the inflation adjuster,

which operates to adjust fees between the first and second years of each two-year fee cycle, the revenue recapture adjuster looks back to the previous two-year fee cycle and attempts to recover revenue losses from that previous cycle through adjustments to the fee schedules for the new cycle. The revenue recaptured through this adjuster is added to the O&M Costs in the above fee calculation formula, so that this recaptured revenue is re-allocated like other program operation costs to the fees charged on a per-manifest basis. Per §§ 264.1313(c) and 265.1313(c), the revenue recovery recapture formula is as follows:

$$\text{Revenue Recapture}_i = [(N_{i\text{Year}1} + N_{i\text{Year}2})_{\text{Actual}} - (N_{i\text{Year}1} + N_{i\text{Year}2})_{\text{Est}}] \times \text{Fee}_{i(\text{Ave})}$$

Where $\text{Revenue Recapture}_i$ is the amount of fee revenue recaptured for each type of manifest submission “ i ,” $(N_{i\text{Year}1} + N_{i\text{Year}2})_{\text{Actual}} - (N_{i\text{Year}1} + N_{i\text{Year}2})_{\text{Est}}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle’s fee schedule; and $\text{Fee}_{i(\text{Ave})}$ is the average fee charged per manifest type over the previous two-year cycle.

Per § 265.1314, exporters would receive an electronic invoice or bill displaying their manifest activity during the prior month and would be expected to make payments in full within 30 days from the date of the invoice. Exporters would be expected to submit electronic payments to the U.S. Department of Treasury through the e-Manifest system using one of the acceptable electronic payment options, which include commercial credit cards, commercial debit cards, and Automated Clearinghouse (ACH) debits.

Per the late fee and collection provisions at §§ 265.1315 and 265.1315, exporters who do not pay their invoices in full and on time would be charged late fees. Late fees begin to accrue for bills not paid in full within 30 days from the date of the invoice. The fees include a penalty (currently 1% annualized of the billable invoice total) and a \$15 handling charge for each month the bill is unpaid. A one-time increase of this penalty to 6% is charged if a bill is not paid four months after the invoice has been issued. After four months, the unpaid invoice is forwarded to the U.S. Treasury Department for collection and further action.

Per § 265.1316, exporters would be able to dispute an invoice using the informal dispute process, if they believe an invoice to be in error (e.g., the invoice does not accurately describe the numbers of manifests submitted in the prior billing period, the types of manifests (paper vs. electronic) submitted in the prior billing period, or, because the invoice appears to have made a mathematical error in generating the amount of fees due under the invoice).

If finalized, the proposed amendments would require any party acting as the U.S. exporter that originated the manifest for an export shipment of hazardous waste in accordance with the manifest requirements under 40 CFR part 262 subpart B and § 262.83(c), whether they be a generator, receiving facility, or recognized trader, to submit the export manifests to the system and pay the requisite fees.

Finally, EPA is proposing to revise § 263.20(g)(3) and remove § 263.20(g)(4)(i). Section 263.20(g)(3) currently requires the transporter to provide a copy of the export manifest to the generator. Today's proposal would allow the collection of manifest data in the e-Manifest system, making the current requirement unnecessary. Employees of a generator site registered in the RCRAInfo Industry Application for access to the e-Manifest system could view export manifests for their site in the system. Generators that elect not to register for e-Manifest, could obtain the export manifest via a system-generated email, using the generator's email address, which EPA is proposing to add to the manifest form. For further details regarding the addition of the generator's email address on the paper manifest, please refer to Section IV.C.3. of today's proposed rule. Therefore, EPA is proposing to modify § 263.20(g)(3) to require the transporter who transports the hazardous waste export shipment out of the U.S. via road or rail border crossing or delivers the export shipment to a seaport for loading onto an international carrier to send paper copies of the manifest and continuation sheet (or images of the paper copies) to the exporter instead of to the generator, or transmit the export manifest and continuation sheet electronically in the system in accordance with the existing manifest requirement for electronic manifest use at § 263.20(a)(4).

EPA is proposing the removal of the current transporter requirement in § 263.20(g)(4)(i). EPA has determined that transporters are not best suited for submitting the export manifest to the system and paying the requisite processing fee based on the above modification to § 263.20(g)(3). EPA notes that transporters would be able to use electronic manifests in lieu of paper manifests to transport RCRA-manifested waste shipments out of the U.S. in accordance with § 263.20(a)(4). Transporters would need to obtain a RCRAInfo Industry Application account to access and use the e-Manifest system. Additionally, EPA is proposing to remove 40 CFR 263.20(g)(4)(ii), which lists the “AES filing compliance date” promulgated in the hazardous waste import/export final rule dated November 28, 2016 (81 FR 85696). The AES filing compliance date was specified as December 31, 2017, in a *Federal Register* notice dated August 28, 2017 (82 FR 41015). That compliance date has passed, and as such the requirement for the transporter to provide a paper copy of the manifest to a U.S. customs official at the point of departure for shipments initiated prior to the AES filing is now obsolete.

EPA requests comment on all the proposed changes discussed above. In addition, EPA requests information regarding whether the proposed changes would work for foreign transporters who transport export shipments to and across the U.S. border. In addition, EPA requests information regarding how many foreign transporters currently transport such shipments within the United States.

4. What is EPA proposing with respect to manifest form changes related to export and import hazardous waste shipments?

EPA received minimal comments on the February 2019 *Federal Register* notice for the proposed ICR which included adding new data fields on the manifest for consent numbers and EPA ID numbers for exporters (To view these comments, refer to Docket ID No. EPA–HQ–OLEM–2018–0756, www.regulations.gov). While comments from state agencies and industry organizations supported adding these new data fields, comments from hazardous waste TSDFs and their trade organizations expressed concern about the proposed additions to the International

Shipments field (Item 16) on the manifest or inclusion of this field on the continuation sheet for the proposed data fields. One commenter argued modifications to the form for international shipments as well as other form changes detailed in the February 2019 public notice will have substantial implications, increase burdens on industry and result in significant costs to have facilities redesign and reprogram their IT systems. Two commenters suggested that before changing the manifest form, EPA should consider how best to upgrade the Waste Import Export Tracking System (WIETS) and ultimately integrate it with the e-Manifest system. These commenters also stressed that if the Agency continues to require AOC numbers on the manifest, Agency information about an international shipment, including an exporter's EPA ID, are available via WIETS. All commenters opposed to the February 2019 proposal for international shipment form changes also suggested EPA develop a separate international shipment manifest form that would contain information from both the manifest and movement document.

For the following reasons, EPA has decided against considering expansion of Item 16 on the manifest to accommodate these new fields and is not considering merging the manifest and international movement documents or creating a separate, international manifest to capture all international shipment data on one paper form. First, as mentioned in the February 2019 *Federal Register* notice (84 FR 2854 at 2856), the one-page paper manifest already contains many data elements and does not have much space left for new additions. Second, EPA assessed merging the international movement document shipment tracking with the manifest requirements to capture both manifest and international movement document data in the e-Manifest system. However, the potential reduction in burden from eliminating duplicative data that are currently required to be listed on both the manifest and the international movement document would not offset the increase in e-Manifest program costs due to the increased need for data entry by EPA's PPC to accommodate the additional data fields currently required by the international movement document. Additionally, merging the manifest and international movement document tracking would increase burden by requiring the use of manifests and payment of manifest fees for export

and import shipments that are currently exempted from manifesting requirements but subject to international movement document requirements (e.g., universal waste, SLABs). EPA's proposal therefore keeps manifest requirements separate from the international movement document requirements for both export and import shipments. EPA, however, intends to address the electronic international movement document-related data as part of EPA's WIETS, as it is integrated as a module in the RCRAInfo Industry Application. See Section IV.A.6. for further discussion of the proposed international movement document-related changes EPA is proposing.

At this time, EPA is proposing to: 1) move the International Shipments field (i.e., Item 16) from the manifest to the continuation sheet, and 2) add new fields for consent numbers and the exporter's EPA Identification number and email address to the International Shipments field. EPA is seeking comment on a proposed revised version of the continuation sheet (EPA Form 8700-22A) reflecting EPA's proposed move of international shipment information to EPA Form 8700-22A, which is available in the docket for this rulemaking. If finalized, EPA would remove the International Shipments field from the manifest and re-designate it as Items 33a and 33b on the continuation sheet as shown on the draft form. EPA would also revise the current manifest instructions for completing the International Shipments field to reflect these new changes.

For Item 33a, the exporter would be required to check the export box and enter the port of exit (city and state) from the U.S. in this new field. In addition, if located separate from the site initiating the shipment, the exporter would be required to enter its EPA ID number and email address in this field. The final domestic transporter of the export shipment would be required to date the manifest in Item 33a to indicate the day the shipment left the U.S. via a road or rail border crossing or the date the shipment was delivered to a seaport of exit for loading onto an international carrier. EPA notes that the requirement under the existing manifest instruction for the final domestic transporter to sign the manifest on the date the waste departs the country has been removed. For import shipments, the importer would be required to check the import box and enter the port of entry (city and state) into the United States in new Item 33a of the

continuation sheet. For Item 33b, destination facilities of import shipments and exporters would be required to record the consent numbers on the manifest for each waste stream listed in Items 9b and 27b of the manifest and continuation sheet, respectively, in this new section.

EPA understands the one commenter's concerns regarding the increased costs they would incur to upgrade their systems to accommodate the new fields. EPA also agrees with other commenters' suggestion that the international shipment information such as the exporter's EPA ID number can be retrieved via WIETS using the waste stream consent numbers currently captured in Item 14 of the manifest. EPA, however, believes the addition of data fields for international shipment information is needed for several reasons. First, EPA continues to believe the addition of separate data fields to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual data entry of data from paper export and import manifests as the manifest would more clearly list the consent number for each waste stream. Second, as discussed in Section IV.A.3. of this rule, EPA is proposing to require exporters to submit the top copy of manifests to EPA and pay the requisite processing fee for those submissions. An exporter's site ID number is needed to ensure that the exporter can use electronic manifests, upload paper manifests to its site account in the system, track its manifest activity (for both electronic and paper manifests) in the system, and receive accurate invoices for each billing cycle. If the responsible exporter is separate from the site initiating the export shipment, relying on consent numbers to retrieve an exporter's ID number from WIETS in lieu of obtaining that number directly from the e-Manifest system or the paper form would require the system or the PPC to obtain reference data on the exporter EPA ID number for each waste stream consent number from WIETS. This process is less efficient than obtaining the exporter's EPA ID number directly from the system or the paper form. The addition of a new data field for the exporter's EPA ID number would enable the e-Manifest system to access the EPA ID number directly or enable the EPA PPC to more efficiently obtain and key that number directly into the system from the paper forms. This efficiency would reduce EPA's administrative costs

for processing export manifests.

As an alternative to creating a new, separate field on the continuation sheet for the exporter's ID number, an exporter could use the existing Generator ID Number (Item 1) to record its ID number on the manifest, if the exporter is the generator or initiated the export shipment. EPA discussed and requested comments on this alternative option in the February 2019 *Federal Register* notice (See 84 FR 2854 at 2856, February 8, 2019) and is now seeking further input. As part of this option, the exporter would record its ID number in the Generator ID Number field and its name and site address in Item 5 of the manifest. If, however, the exporter is not the generator or did not initiate the export shipment, then the exporter would enter its name and site address on the left side of Item 5 and supply the generator's information (i.e., generator site's name and address), including the generator's site ID on the right side of Item 5. Additionally, as discussed in Section IV.C.3. of this proposed rule, EPA is proposing to add a new field in Item 5 of the manifest for the generator's email address. Currently, "email address" is an optional field in the e-Manifest system. An exporter would be expected to provide its email address in this new field. If the exporter is not the generator, the exporter would be expected to supply the generator's email address on the right side of the form. EPA requests comment on all of these proposed changes to the manifest form and continuation sheet.

5. What is EPA proposing in today's action that only impacts import shipments?

EPA is proposing to delete the requirement in 40 CFR 262.84(c)(4) that the importer provide an additional copy of the manifest to the transporter to be submitted by the receiving facility to EPA per §§ 264.71(a)(3) and 265.71(a)(3). This additional copy of the manifest is no longer necessary because the receiving facility is now required to always submit the top copy of the paper manifest and any continuation sheets to the e-Manifest system.

6. Additional proposed changes to international shipment requirements

EPA's proposal includes revisions to the export and import shipment international movement document-related requirements to more closely link the manifest data with the

international movement document data. Doing so will enable linking the manifest data with the eventual confirmation of receipt and confirmation of recovery or disposal sent by the U.S. receiving facility to WIETS for an import shipment, or sent by the foreign receiving facility for an export shipment for submittal by the exporter to WIETS. As mentioned in Section IV.A.3, EPA intends to redesign WIETS to a module integrated within the RCRAInfo Industry Application that will allow more efficient data sharing between WIETS and the other modules and improved access by state agencies and the public to export and import final data. WIETS currently includes industry-created and submitted export notices, import notices, and export annual reports; EPA review and processing of such submittals; and EPA node-based electronic exchanges of notice and response (e.g., consent) data with Canada and Mexico. The redesign is planned to occur in two stages. The initial stage would make export notices, import notices and export annual reports, and related Agency processing more efficient and automated through integration with the RCRAInfo Industry Application and through use of an Application Programming Interface-based electronic exchange of notice and response data with Mexico and eventually Canada. The second stage of the redesign intends to add functionality to enable the establishment of the electronic import-export reporting compliance date discussed in the November 28, 2016, final rule revising hazardous waste import and export requirements (81 FR 85700). Once both stages are fully completed, EPA intends the redesigned WIETS to include the additional electronic documents such as: export confirmations of receipt, export Exception Reports, export confirmations of recovery or disposal, import confirmations of receipt, receiving facility notifications of the need to arrange alternate management or the return of an import shipment, and import confirmations of recovery or disposal. Lastly, EPA's proposal reflects potential future electronic data exchange of international movement document data, confirmation of receipt data, and confirmation of recovery or disposal data between the U.S. and another country such as Canada. Should such an electronic data exchange agreement be established, facilities in both countries could utilize the exchange to transmit required data more efficiently.

EPA is therefore proposing revisions to 40 CFR 262.83(d)(2)(i) and 262.84(d)(2)(i) to require the international movement document to list the RCRA manifest tracking number from Item 4 if the shipment is required to be manifested while being transported in the United States. Additionally, since Canadian movement documents have unique tracking numbers similar to manifest tracking numbers, EPA is proposing revisions to 40 CFR 262.83(d)(2)(ii) and 262.84(d)(2)(ii) to add the unique international movement document tracking number as an acceptable alternative to listing the shipment number and total number of shipments from the EPA AOC or the foreign export permit on the generic international movement document available at <http://www.basel.int/Portals/4/Basel%20Convention/docs/techmatters/forms-notif-mov/vCOP8.doc>.

Parallel to the manifest submittal requirements, EPA is proposing revisions to 40 CFR 262.83(d)(2)(xv) and 262.84(d)(2)(xv) to require the exporter and U.S. receiving facility to submit a copy of the signed international movement document to WIETS. Exporters would be required to submit the copy to WIETS within three days of receiving the copy from the foreign facility, and U.S. receiving facilities would be required to submit the copy to WIETS within three days of shipment delivery to confirm receipt of the shipment for shipments occurring on or after the electronic import-export reporting compliance date. The proposed new 40 CFR 262.83(d)(2)(xvi) requires exporters to submit a copy of the signed confirmations of recovery or disposal that it receives from the foreign receiving facility to WIETS within three days of the exporter's receiving the copy of the signed confirmation of recovery or disposal for shipments occurring on or after the electronic import-export reporting compliance date. To reflect the possible establishment of an electronic exchange of shipment tracking data with another country like Canada, EPA is proposing revisions to 40 CFR 262.83(f)(4)-(5), 262.83(f)(6)(ii), 262.84(d)(2)(xv), 262.84(g)(1)-(2), and new 40 CFR 262.83(d)(2)(xvii) to allow an established data exchange to be used to comply with the transmittal of shipment confirmations for export and import shipments between the exporter or receiving facility and the foreign receiving facility

or foreign exporter, respectively, and between the receiving facility and the competent authority for the country of export for import shipments. Similarly, EPA is proposing new 40 CFR 262.83(f)(3)(iii) and 262.84(f)(4)(iii) to allow the use of an established data exchange to comply with the transmittal across borders of notifications of the need to arrange for the alternate management or return of an individual shipment for export and import shipments per 40 CFR 262.83(f)(3)(i) and 262.84(f)(4)(i).

Lastly, EPA is proposing the following technical corrections and conforming amendment to import and export requirements. First, EPA is proposing revisions to 40 CFR 261.39(a)(5)(v)(B), 261.39(a)(5)(xi), 262.83(a)(6), and 262.83(g) to reflect that the AES compliance date of December 31, 2017 (which was specified in an announcement in a *Federal Register* notice dated August 28, 2017 (82 FR 41015)) has passed and requirements concerning shipments made prior to that date can no longer apply and are thus obsolete. Next, EPA is proposing revisions to 40 CFR 262.84(b)(1) to reflect that all import notices are submitted electronically using WIETS at this time. Electronic import notices have made EPA's processing more efficient and allow importers and receiving facilities to store and download EPA AOC letters and import consent documentation within WIETS rather than keeping paper copies for recordkeeping on site. Additionally, EPA is proposing revisions to the text in 40 CFR 261.6(a)(3)(i)(A) - (B) and 262.20(a)(2) to reflect that 40 CFR part 262 subparts E and F no longer exist as of December 31, 2016, and 40 CFR part 262 subpart H applies. EPA is also proposing revisions to §§ 262.83(d)(2)(xv), 262.83(f)(4)-(5) and (6)(ii), 262.84(d)(2)(xv), and 262.84(g)(1)-(2) to clarify that confirmations of receipt and confirmations of recovery or disposal for export and import shipments are only required to be sent to the competent authorities of the countries that control such shipments as exports, transits, or imports of hazardous wastes, consistent with existing text in 40 CFR 264.12(a)(2), 264.12(a)(4), 265.12(a)(2), and 265.12(a)(4). EPA is additionally proposing revisions to §§ 261.4(a)(25)(i)(A), 261.4(a)(25)(i)(H), 261.39(a)(5)(i)(A), 261.39(a)(5)(i)(F), 262.83(b)(1)(i)-(iv), 262.83(b)(3),

262.83(d)(2)(iii)-(v), 262.83(d)(2)(iii)-(v), 262.83(d)(2)(viii)-(ix), 262.84(b)(1)(i)-(iv), 262.84(b)(2), 262.84(c)(1)(i), 262.84(d)(2)(iii)-(v), 262.84(d)(2)(viii)-(ix), to specify the listing of the site address in notices, manifests and international movement documents in place of the existing requirement to list “address,” to facilitate country review of the documents. EPA is also proposing revisions to 40 CFR 260.2(d)(1) – (2) and 261.4(a)(25)(v) to make hazardous secondary material export documents prepared, used and submitted under 40 CFR 261.4(a)(25) available to the public when these electronic documents are considered by EPA to be final documents on March 1 of the calendar year after the related hazardous secondary material exports occur. EPA is proposing this conforming change to make hazardous secondary material exports, reinstated as part of EPA’s response to vacatur of certain provisions of the definition of solid waste rule effective May 30, 2018 (83 FR 24664), consistent with EPA’s earlier rule regarding confidentiality determinations related to all exports, imports or transits of hazardous waste and exports of conditionally excluded materials (i.e., cathode ray tubes) subject to export, import, or transit requirements (82 FR 60894) when the final rule was published on December 26, 2017.

B. What is EPA proposing with respect to Exception, Discrepancy, and Unmanifested Waste Reports?

While the manifest system is often regarded as consisting only of the actual manifest form and any necessary continuation sheets, the complete manifest system extends to several related written reports that are required under the existing regulations when there are specific unresolved problems or irregularities related to a waste shipment that is subject to manifesting. There are currently three additional reports under the RCRA Subtitle C regulations that complete the manifest tracking system: Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports. These reports address issues that arise when return manifests from receivers are late (Exceptions), when the materials received do not match with the quantities or types of materials indicated as being shipped by generators (Discrepancies), and instances when wastes that should

have been manifested arrive at a facility without a manifest (Unmanifested Wastes).

This action proposes and solicits public comment on revisions to the manifest requirements applicable to Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports at 40 CFR 262.42, 264.72, and 264.76 respectively. During past Advisory Board meetings, the e-Manifest Advisory Board recommended that EPA integrate these written reports into the e-Manifest system. Below, EPA describes each report in greater detail, and the Agency's proposal on how to leverage e-Manifest to satisfy each requirement.

1. Exception Reporting

Exception Reporting applies to generators, and these reports are required in the federal regulations at 40 CFR 262.42 (Hazardous Waste) and 40 CFR 761.217 (PCBs). Exception reports are intended to address the situation in which the generator does not receive timely confirmation that their hazardous or PCB wastes, tracked with a manifest, arrived at the facility designated by the generator to receive its waste. For large quantity generators or LQGs (those generating 1 kg or greater of acute hazardous waste or 1,000 kg or greater of non-acute hazardous waste per month) and all PCB waste generators, Exception Reporting is a two-step process. In the first step, if the generator has not received the signed, return copy of the manifest from the designated facility within 35 days from the date the transport of the waste shipment began, the generator must contact the transporter and/or the designated facility to determine the status of the generator's waste. In the second step, if the status of that waste is not resolved within 45 days (from the start of transport), the generator must file an Exception Report with their EPA Regional Administrator (or State Director in authorized states). The Exception Report, as currently implemented by regulation, is a separate written report that consists of: (1) A legible copy of the manifest for which the generator does not have confirmation of delivery; and (2) a cover letter signed by the generator explaining its efforts to locate the waste and the results of those efforts. There is a similar Exception Reporting requirement applicable to small quantity generators (SQGs) at § 262.42(b), except that SQGs have an additional 15 days (60 days total) to

reconcile the status of their waste with the other handlers, and the separate cover letter is not required as a part of their report.⁷

1.1. What is EPA proposing for Exception Reports?

The Agency is proposing two changes related to Exception Reports: (1) Allow generators using electronic or hybrid manifests to use the e-Manifest system to satisfy exception reporting requirements; and (2) adjust exception reporting timeframes to better align with timeframes required for submission and processing of paper manifests in the e-Manifest system.

The primary goal of EPA is to transition manifest users from a paper-intensive, burdensome system to the more efficient e-Manifest system to track and manage hazardous waste shipments. At present, electronic manifests (both fully electronic and hybrid manifests) represent an extremely small portion of manifests managed in the system and most generators continue to track their waste shipments under the paper-based system. During the e-Manifest system Advisory Board meeting in June 2019, entitled “Increasing Adoption of the e-Manifest system,” the Advisory Board recommended that EPA integrate Exception Reports into the e-Manifest system. EPA accepts the Board’s recommendation and believes integration of Exception Reports in the e-Manifest system could add to the incentives for generators to use electronic manifests. Therefore, EPA is proposing regulatory amendments to the existing Exception Report requirements at § 262.42 by adding new paragraph (d) and (e) and amending § 761.217 by adding new paragraphs (c) and (d). EPA notes these proposed regulatory amendments do not apply to exporters of waste shipments subject to the manifest requirements. Exporters must file export Exception Reports, in lieu of the requirements of § 262.42, according to the existing requirements specified at § 262.83(h). Electronic export Exception Reports under § 262.83(h) will be developed as part of WIETS.

⁷ The current Exception Report requirements for SQGs require such generators to submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the relevant EPA Regional Administrator. The submission to EPA need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

Proposed paragraphs at §§ 262.42(d) and 761.217(c) establish the legal and policy framework for the use of electronic Exception Reports for hazardous waste and PCB waste, respectively. If finalized, Exception Reports originated in the e-Manifest system would be considered the legal equivalent of paper Exception Reports signed with conventional ink signatures. Further, wherever the existing regulations require an Exception Report to be completed, signed, provided, and sent to the EPA Regional Administrator (or the State Director in authorized states), the execution of an electronic Exception Report would be deemed to comply with the requirements to complete, sign, provide, send, or otherwise use the Exception Report.

Under paragraphs §§ 262.42(e) and 761.217(d), EPA is proposing to restrict electronic exception reporting to manifested shipments using electronic manifests (hybrid or fully electronic) pursuant to § 262.24(c). This is because to leverage the e-Manifest system to assist with exception reporting, the system must “know” the date of shipment from the generator. When electronic manifests are used, this information is readily available. Conversely, paper manifests are not submitted to the e-Manifest system until after the signed, final manifest is submitted by the receiving facility, rendering it impossible for the system to identify paper manifests initiated by the generator but not yet completed by the receiving facility. For hybrid manifests, a generator would be required to register in the RCRAInfo Industry Application for an account to take advantage of electronic exception reporting in the e-Manifest system.⁸ (Relatedly, EPA is also requesting comment in today’s proposal regarding whether all generators should be required to register for access to the e-Manifest system (See Section IV.C.3).)

The hybrid or mixed paper/electronic manifest is a manifest approach that EPA adopted

⁸ Instructions for user registration for the RCRAInfo Industry Application are available at EPA’s e-Manifest webpage (www.epa.gov/e-manifest). Each user of the e-Manifest system must obtain a RCRAInfo Industry Application account for access to the e-Manifest system. EPA recommends each site register at least two site employees as Site Managers before registering for any other permission levels. A Site Manager is a special permission afforded to users of a module in the RCRAInfo Industry Application. In addition to having permission to view, create, and sign manifests electronically in the e-Manifest system, Site Managers also manage and approve permissions for other users at their organizational site.

in the User Fee Final rule to assist generators who are not able to fully participate in electronic manifesting. Under the hybrid manifest approach, generators are not required to obtain e-Manifest system accounts nor are they required to electronically track their wastes. The hybrid manifest approach allows the initial transporter and subsequent waste handlers to use fully electronic manifests with their non-participating generator customers. The initial transporter may print a copy of the electronic manifest for the generator, and the generator may sign the paper copy, obtain the initial transporter's ink signature on the paper copy, and then retain the paper copy on-site as the generator's initial manifest copy as is done under traditional manifest requirements. From then on, the initial transporter and subsequent waste handlers complete the remainder of the tracking of the shipment electronically in the e-Manifest system with electronic signatures and electronic transmissions to the system. As discussed above, generators using the hybrid manifest approach must still register for an account in the RCRAInfo Industry Application in order to utilize electronic Exception Reporting under this proposed rule, even if they do not track their wastes electronically.

Under today's proposed electronic exception reporting approach, EPA would upgrade the e-Manifest system's functionality to alert large quantity generators and small quantity generators based off of their notified federal generator status, as well as PCB waste generators, if receiving facilities designated on their manifests have not submitted final, signed manifests to the system for confirmation of delivery within the required timeframes at §§ 262.42(a)(1), 262.42(b), or 761.217(a)(1), respectively. Additionally, the system could alert the respective receiving facility on the manifest.

First, the system would monitor the verification timeframe beginning at the custody exchange from the generator to the initial transporter by way of the generator's electronic signature for the fully electronic manifest or the initial transporter's electronic signature for the hybrid manifest. Second, the system would provide an alert to generators when exception reporting requirements may be triggered; and if needed, allow generators to submit required

Exception Report information electronically, and disseminate the Exception Report to the relevant EPA Region or the authorized state Agency. LQGs and PCB waste generators would still be required to contact the transporter and/or the owner or designated facility per §§ 262.42(a) or 761.217(a) to determine the status of the hazardous or PCB waste and provide an explanation of their efforts to locate the hazardous or PCB waste and the results of those efforts. Such generators, however, would not be required to manually submit the report to EPA or the states.

EPA may design the system to provide a drop-down list of explanations that an LQG or PCB generator could select from to explain its efforts to locate and reconcile their unverified shipment. The explanation from the drop-down list or text string would be used to complete the Exception Report. For example, a text string could say, “The initial transporter and/or designated facility were contacted via telephone regarding the delivery date of the waste(s) identified in 9b to the designated facility. To date, no information has been provided confirming shipment receipt by the designated facility.” The drop-down list could also include an explanation of “other” which a user would select, if the options available did not accurately explain the set of circumstances or reasons why they are unable to confirm delivery by the designated facility. If a user selected this option, the system could provide a text field/pop-up box and prompt the user to enter a “text string” explaining the site’s efforts to locate the shipment and reconcile the problem. Following completion of the Exception Report, the e-Manifest system would then transmit the report to the relevant EPA Region or authorized state Agency. For SQGs, the drop-down menu would not be necessary as SQGs are not required to provide a detailed explanation regarding the inability to verify delivery of their manifested shipment to the destination facility. Instead, under the proposal, the system would provide a copy of the manifest for which the SQG does not have confirmation of delivery along with a statement saying, “The return manifest copy was not received.”

Although this action considers regulatory amendments to the existing Exception Report

regulations to allow for electronic exception reporting, EPA is not proposing to collect and upload written, paper-copies of Exception Reports in the e-Manifest system. EPA believes maintaining paper Exception Report submissions would be costlier to maintain and thus would result in the need for EPA to contemplate a distinct or additional fee premium related to entering Exception Reports to ensure related costs are recovered. Therefore, to avoid incurring costs related to paper processing and data entry activities necessary to enter the Exception Report information into the e-Manifest system, EPA would require LQGs and SQGs who opt out of tracking their waste shipments electronically in the system to comply with the existing exception reporting requirements at §§ 262.42(a) and (b) respectively for written, hard-copy Exception Reports.

EPA requests comment on the proposed approach to adopt electronic Exception Reports only for registered generators using fully electronic or hybrid manifests. This approach would allow generators who initiate shipments under electronic or hybrid manifests to use the system to trigger alerts regarding manifest exceptions and allow for electronic submission of the Exception Report.

In addition to the above proposed changes, EPA is also proposing to revise the current 35/45-day timeframes in § 262.42(a), and (c)(2), and §761.217(a) and (b) to better conform to timeframes for submittal and processing of paper manifests in the e-Manifest system. For example, for entities using paper manifests, receiving facilities have 30 days from receipt of a generator's shipment to submit the final, signed paper manifest to EPA. In addition, EPA's PPC needs time to enter data, e.g., from image copies of paper manifests, especially if the paper manifests contain incorrect, illegible, or incomplete data. Thus, the Agency realizes that LQGs may not be able to access the final, signed paper manifest in e-Manifest until past the first 35-day exception reporting timeframe in the regulations.

Therefore, EPA believes adjustments to the current 35/45-day timeframes for an LQG generator to verify shipment receipt by the receiving facility are needed to conform to changes

related to e-Manifest submissions. To align with timeframes related to submitting and processing paper manifests in the e-Manifest system, EPA is proposing that all LQGs have five additional days to verify receipt of the shipment, reconcile the late manifests with the transporter and/or destination facility, and complete and submit Exception Reports to the EPA Regional Administrator (or state Agency in authorized state). LQGs and PCB waste generators would have up to 40 days to verify that their waste was received by the facility designated on the manifest. The 40-day timeframe would begin from the date the manifest was accepted by the initial transporter for off-site transportation to the receiving facility. If an LQG does not receive notification from the e-Manifest system that the final, signed manifest was received within this 40-day timeframe, the LQG must contact the transporter and/or the designated facility to determine the status of the generator's waste. If the status of the shipment is not resolved within 50 days (from the start of transport), the LQG must file an Exception Report with the EPA Regional Administrator (or state Agency in authorized states). EPA requests comment on the proposed 40/50-day timeframes of exception reporting for LQGs. EPA is not proposing additional time for SQGs to verify receipt of their shipments by the destination facility. The current SQG timeframe for verification of shipment delivery is 60 days (§ 262.42(b)). EPA believes the proposed timeframes triggering exception reporting for LQGs aligns adequately with the e-Manifest system.

2. Discrepancy Reporting

The manifest form enables the receiving facility to flag several types of “discrepancy” events on the manifest. Under the current regulations and manifest forms, there are boxes to be checked in the manifest's discrepancy field (Item 18) when the designated facility finds or produces one of, but not limited to, these shipment irregularities:

- Significant differences in the quantity of waste shown on the manifest as having been shipped, and what the designated facility determines to have been received. By regulation, significant quantity discrepancies occur when there is any variation in piece

count (e.g., four drums received instead of five), as well as when there is a variance of 10% or more by weight for any bulk or batch wastes shipped on a manifest; and

- Significant differences between the type of waste shown as shipped and what the designated facility received. Significant type discrepancies are defined as obvious differences which can be discovered by inspection or waste analysis, such as a solvent substituted for an acid, or toxic constituents that were not listed on the manifest.

While five types of discrepancies can be checked off on the manifest form, only significant discrepancies in quantity and type are treated as major irregularities requiring additional, separate reporting requirements. The RCRA regulations refer to these reporting requirements as Discrepancy Reports. Under the existing federal regulation, §§ 264.72, 265.72, and 761.215, provide a two-step process for handling significant quantity and type discrepancies in hazardous and PCB waste shipments, respectively. First, upon discovering a significant quantity or type discrepancy, the facility must attempt to reconcile the discrepancy with the generator or transporter. Second, if the significant discrepancy remains unresolved on the date 15 days after receipt of the waste, the facility must immediately send a letter to the EPA Regional Administrator or to the authorized state describing the discrepancy and attempts to reconcile it. This letter report must also include a copy of the manifest at issue.

2.1. What is EPA proposing for Discrepancy Reports?

During the June 2019 Advisory Board meeting, the Board recommended that EPA integrate Discrepancy Reports into the e-Manifest system. EPA accepts the Board's recommendation and believes integration of Discrepancy Reports in the e-Manifest system would reduce paperwork burden and may incentivize users to transition to fully electronic or hybrid manifests by increasing the value of the system. Therefore, EPA is proposing two changes related to Discrepancy Reports: (1) Allow receiving facilities to use the e-Manifest system to satisfy discrepancy reporting requirements; and (2) adjust the discrepancy reporting timeframe to better align with timeframes required for submission and processing of manifests in the e-

Manifest system. EPA is proposing changes to integrate the system with Discrepancy Reports by adding new requirements under §§ 264.72(c) and 265.72(c) (Hazardous Waste) and 761.215(c) (PCBs) that would address the legal equivalency of the electronic reports to the written, paper reports and allow for electronic discrepancy reporting for wastes shipped on electronic or hybrid and paper manifests.

EPA is proposing new paragraphs (c)(1) through (c)(4) of §§ 264.72, 265.72, and 761.215 to establish the legal and policy framework for the use of electronic Discrepancy Reports. If finalized, Discrepancy Reports originated in the e-Manifest system would be considered the legal equivalent to paper Discrepancy Reports signed with conventional ink signatures. Further, wherever the existing regulations require a Discrepancy Report to be completed, signed, and sent to the EPA Regional Administrator (or the regulating Agency in authorized states), the execution of an electronic Discrepancy Report in the national e-Manifest system would be deemed to comply with the requirements to complete, sign, provide, send, or otherwise use the discrepancy report.

However, unlike our proposed restriction to limit electronic exception reporting to electronic manifests, EPA is proposing to extend electronic reporting of Discrepancy Reports to all manifest submission types, including paper (i.e., image only and image plus data). EPA believes this approach is more appropriate for discrepancy reporting because, unlike exception reports, which must be completed by generators, discrepancy reports must be completed by receiving facilities, and receiving facilities already are registered in the e-Manifest system, e.g., for billing purposes. In addition, discrepancy reporting is not limited by the use of paper manifests, because, unlike exception reporting, the system does not need to “know” the date of shipment from the generator in order to generate a Discrepancy Report.

The e-Manifest regulations currently allow receiving facilities to submit final, signed manifests to EPA within 30 days after a shipment is received. In addition, time is needed for EPA’s PPC to process paper manifests, which, as mentioned previously, can be delayed due to

the data quality. Consequently, facilities may not be able to submit the final, signed paper manifests to the e-Manifest system until past the 15-day discrepancy reporting timeframe in the regulations.⁹ Therefore, EPA believes adjustments to the current 15-day timeframe of significant discrepancies (i.e., waste shipments having significant differences between the quantity or type of waste shown as shipped by the generator and what the designated facility received) are needed. To this end, EPA is proposing revisions to §§ 264.72(c) 265.72(c), and 761.215 to allow receiving facilities up to 20 days to reconcile a shipment with the generator and/or transporter for such discrepancies. This proposed timeframe is also consistent with the conceivable number of days passed before receiving facilities upload copies of paper manifests to the e-Manifest system.¹⁰ The proposed timeframe would begin at the custody exchange from the delivering transporter to the receiving facility by way of the receiving facility's signature on a manifest. The proposed 20-day timeframe would also apply to users of fully electronic and hybrid manifests. EPA describes the proposals for electronic discrepancy reporting and the reconciliation timeframe below in greater detail.

Receiving facilities would still be expected to reconcile the discrepancy with the generator or transporter (e.g., with telephone conversations) within the proposed 20-day timeframe. After receiving facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, the receiving facility can resolve significant discrepancies in waste quantity or type either on the manifest prior to submission to EPA or, post-receipt by EPA, through the corrections process in e-Manifest adopted in the User Fee Final Rule. As explained

⁹ 40 CFR 264.71(a)(2) and 264.72(a)(2) require a designated facility to sign and date a manifest, and immediately give the delivering transporter a copy of the signed manifest. 40 CFR 264.72(c) and 265.72(c) require TSDFs to report the discrepancy 15 days after receiving the waste.

¹⁰ Based on consultations with receiving facilities, EPA has learned facilities typically take up to 20 days to load digital copies of paper manifests to the e-Manifest system. Prior to uploading digital copies of paper manifests to the e-Manifest system, receiving facilities confirm whether the wastes having been shipped and reflected on a manifest by the generator match what the designated facility determines to have been received. Upon receipt of a waste shipment, a receiving facility compares the manifest to its generator customer's waste profile (WP) and identifies any discrepancies. A receiving facility may also conduct waste testing to confirm the WP which could lead to discrepancies. The timeframe for manifest uploads may be shorter if a receiving facility prepares the manifest on behalf of the generator because the manifest is based on the WP at the facility.

in that final rule, a post-receipt correction operates as a change to the data records in the e-Manifest system but does not require the original manifest to be altered or re-signed by a receiving facility. Note that any waste handler shown on the manifest, including waste handlers who tracked their waste using paper manifests, can submit post-receipt corrections in e-Manifest. However, such waste handlers would need to register and obtain a RCRAInfo account to be able to make post-receipt corrections in e-Manifest. Under the proposed approach, the system would monitor the 20-day reconciliation timeframe and generate the electronic Discrepancy Report, if significant discrepancies were identified but the generator, transporter, or receiving facility did not submit the correction to the system within the 20 days.

The approach for integrating the e-Manifest system and the Discrepancy Report for paper and electronic manifest involves four elements: 1) a copy of the manifest at issue; 2) the significant discrepancy type (i.e., significant difference in quantity or type); 3) date of signature of the receiving facility; and 4) a description explaining the discrepancy and attempts to reconcile it. Since paper manifests are not submitted to the e-Manifest system until after a receiving facility signs them, a receiving facility may need to document the significant discrepancy information and the attempts to reconcile it in Item 18a of the manifest at the time of submission of the manifest to ensure that the system can monitor the discrepancy and alert the user, if post-receipt corrections are not made before the 20-day timeframe is triggered.

EPA believes that immediately upon inspection, a receiving facility should be able to discover variations in container piece count as well as when there is a variance of 10% or more by weight for any bulk or batch wastes shipped on a manifest. As such, receiving facilities should be able to check the corresponding discrepancy box in Item 18a of a manifest and submit the manifest to the e-Manifest system rather quickly. The system would begin monitoring the 20-day discrepancy timeframe once the manifest is loaded into the system, and if necessary, generate a Discrepancy Report. Similarly, for most shipments, a receiving facility should be able to immediately discover upon inspection significant differences between the type of waste shown

as shipped and what the receiving facility received; occasionally significant discrepancies are not discovered immediately and may require waste analysis for identification.

Our proposed approach discusses discrepancy reporting procedures for submitting copies of paper manifests (image only or data + image) and electronic manifests (fully electronic or hybrid). Currently, image files of paper manifests are submitted to the e-Manifest system via EPA's Application Programming Interface (API) services or directly in the e-Manifest system by accessing a user's account dashboard and selecting the "Upload Paper Manifest" option.

Regardless of the paper submission method chosen for the image file, the PPC would enter all data recorded on a manifest into the system, including the significant discrepancy type from Item 18a and the waste shipment receipt date recorded in Item 20 of the designated facility block of the manifest. A receiving facility would record the attempts to reconcile the discrepancy at the time of a manifest submission or after the manifest was uploaded into the system.

If discovery of a discrepancy is immediate, a receiving facility may elect to document the attempts to reconcile the discrepancy in Item 18a of the manifest. If, however, discovery of a discrepancy is delayed or a receiving facility delays submission of a manifest to the system and reconciliation of the discrepancy is approaching the 20-day reporting timeframe, the receiving facility would document its attempts to reconcile a significant discrepancy at the time of documenting the discrepancy in quantity or type in Item 18a and submit the manifest to the system. This information would be used as part of a Discrepancy Report, if the discrepancy was not resolved within the 20-day discrepancy timeframe. The system may be designed in a manner that would provide a textbox field/pop-up box that would prompt the PPC staff to enter the discrepancy description from Item 18a in the pop-up box. Once the paper manifests are loaded into the e-Manifest system, the system would flag the discrepancy and monitor its status. If the 20-day discrepancy timeframe is triggered, the system would immediately alert the facility that the discrepancy status is unchanged and, if necessary, generate the Discrepancy Report. At that time, the system would instruct a receiving facility to enter a description of its attempts to

reconcile the discrepancy, if it had not provided such information in the image file, and instruct the facility to transmit the report to the relevant EPA Region or state. A receiving facility would use the drop-down list (as described above in Section IV.B.1.1 for Exception Reports) to record a description of the discrepancy event on the manifest. The drop-down list would provide possible descriptions detailing the discrepancy and the attempts the receiving facility made to reconcile it. For example, a text string description for a significant discrepancy regarding a variation in piece count could say, “The number of drums as having been shipped for the waste shown in line #1 of Item 9b does not match the number of drums actually received. The generator and/or initial transporter were contacted via telephone regarding the discrepancy. The discrepancy has not been resolved at this time.”

If a receiving facility submitted an image plus data manifest via API services, the receiving facility would follow the above discrepancy reporting procedures. If the receiving facility submitted the manifest near the 20-day reporting timeframe, at the time of manifest submission it would have to report both the discrepancy type and its attempts to reconcile the discrepancy. The description of the discrepancy and efforts to resolve the discrepancy would have to be included in the data file. Similarly, if a facility submitted the image plus data manifest from its dashboard using the “Upload Paper Manifest” option, then the facility would enter all manifest data from the image file, including the discrepancy description and attempts to resolve it, using the drop-down list described above. If the system prepared a draft Discrepancy Report, the system would instruct the receiving facility to add a description of the discrepancy to the report and its attempts to reconcile the discrepancy, if the facility had not documented such information in the data file, and instruct the facility to transmit the report to the relevant EPA Region or state.

The e-Manifest system would leverage data for hybrid and fully electronic manifests to flag, monitor, and generate the Discrepancy Reports. A drop-down list may be used to describe efforts to reconcile a discrepancy. Regardless of the manifest submission type chosen for

electronic manifests, a description of the discrepancy and attempts to reconcile it, and a copy of the manifest at issue would complete the Discrepancy Report, and the receiving facility would be prompted to transmit the report to the relevant EPA Regional Administrator or state.

For reasons similar to those explained above for electronic exception reporting, EPA believes allowing electronic discrepancy reporting serves to increase use and value of the e-Manifest system while reducing costs related to collecting and processing paper-based Discrepancy Reports, which may necessitate a distinct or additional fee premium to recover such costs. While the manifest containing the significant discrepancy comprises most of the Discrepancy Report and is already captured in the system, other aspects of the Discrepancy Report are not, and would require the PPC to process the data from paper Discrepancy Reports and enter them into the e-Manifest system. Thus, manual processing of these written reports would require additional time and perhaps some separate, distinct fee to recover the processing costs. EPA prefers not to allocate its existing or future resources to process any paper documents other than paper manifests and believes the proposed option is the best approach. EPA requests comment on its proposed approach to adopt electronic Discrepancy Reports for fully electronic and hybrid manifests, as described above.

EPA notes that although it is not impossible to implement electronic discrepancy reporting for manifests that do not originate in the e-Manifest system, implementation of our proposal may be challenging given that data quality issues may delay the loading of image files and the data contained in them into the e-Manifest system. After image-only files are received by EPA, the PPC requires time to process them. The PPC may also need additional time to process image files that were submitted with the corresponding data via API services or the “Upload Paper Manifest” option. Consequently, if data from these manifests are not keyed into the e-Manifest system before the discrepancy timeframe is reached, the system could not monitor, flag, or alert receiving facilities of a manifest discrepancy, nor could it generate a Discrepancy Report. Additionally, with image only and data plus image submissions, a receiving facility will have up

to 30 days from delivery to submit its final copy to EPA. To leverage the e-Manifest system to assist the receiving facility with discrepancy monitoring, alert the receiving facility of the 20-day discrepancy timeframe, and generate a Discrepancy Report, a receiving facility would need to submit the final manifest several days prior to the 20-day discrepancy timeframe, which may not always be practicable. If the manifests are not loaded in the system before the 20-day timeframe and/or the system cannot generate a Discrepancy Report, then a receiving facility would be required to submit a written report to the EPA or state. For these reasons, EPA can see how electronic reporting of Discrepancy Reports may be better suited for manifests that originated in the e-Manifest system. Therefore, EPA requests comment on whether there should be a limit on our discrepancy reporting proposal to manifests that originated electronically (i.e., fully electronic or hybrid) in the e-Manifest system. EPA also requests comment on other approaches that should be considered for electronic discrepancy reporting associated with digital copies of paper manifests.

Finally, EPA is considering an alternate approach that would eliminate the requirement for Discrepancy Reports altogether, and instead, address discrepancy events through the e-Manifest corrections process. Under this approach, receiving facilities or EPA's PPC would upload/enter discrepancies identified under Item 18. Generators who had e-Manifest system access would receive email alerts regarding Item 18 discrepancies, review the final manifest in e-Manifest, and submit post-receipt manifest corrections. Thus, disagreements would be worked out by handlers via the current corrections process. In lieu of a formal Discrepancy Report to federal or state regulators, the e-Manifest system would make available, as it does currently, all manifest corrections to regulators. In addition, the system would produce a report for regulators highlighting Item 18 discrepancies not corrected by the generator within a certain timeframe (e.g., 15 days). EPA requests comment on this alternate approach to discontinue separate Discrepancy Reports, and instead rely on the e-Manifest corrections process. EPA also requests comments on whether this approach to eliminate Discrepancy Reports would require the Agency

to also adopt a requirement that all generators register for access to e-Manifest so as to ensure generators have a means to resolve discrepancies in the system. Additionally, this approach would not require receiving facilities to submit a letter to regulators describing the discrepancy and attempts to reconcile it and, instead, would rely on regulators reviewing system reports and following up with receiving facilities as desired.

3. Unmanifested Waste Reporting

As mentioned previously, the Advisory Board made recommendations for improving electronic manifest adoption by manifest users. Besides the Board's recommendations to integrate Discrepancy and Exception Reports into the e-Manifest system, the Board recommended EPA also integrate Unmanifested Waste Reports into the e-Manifest system. EPA agrees with the Board's recommendation. The Discrepancy, Exception, and Unmanifested Waste Reports generally serve similar purposes and are all required when specific, unresolved problems or irregularities occur to waste shipments that are subject to manifesting. However, electronic reporting in the e-Manifest system for unmanifested waste shipment presents unique implementation issues that do not arise with the other reports.

Unlike manifested shipments that require Discrepancy or Exception Reports, there is no existing manifest in the system when an unmanifested report is required. The system can readily accommodate electronic Discrepancy and Exception Reports, if finalized, because existing manifest data captured in the e-Manifest system can support flagging, tracking, and follow-up actions related to exception and discrepancy events. This is not the case with unmanifested waste shipments, because manifest data for unmanifested shipments do not exist in the system. Therefore, information for the unmanifested waste shipment would need to be incorporated into e-Manifest, requiring administrative costs and requiring user fees to recover those costs.

3.1 What is EPA proposing for Unmanifested Waste Reports?

EPA is proposing to accept only electronic submissions of Unmanifested Waste Reports to the system by the receiving facility. EPA would not accept Unmanifested Waste Reports

through a written, hard copy report. EPA would revise the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and § 761.216 for PCB wastes. These revisions would require an electronic reporting format that would be very similar to the current electronic form for manifests, except that the receiving facility would not be expected to complete all the fields currently required on the manifest. For the electronic Unmanifested Waste Report, a receiving facility would be expected to provide information similar to the generator information currently required on manifests (i.e., Items 1, 5, and 10 thru 13), if available; the transporter information (i.e., Items 6 and 7 (if available)); and the receiving facility information (i.e., Items 8 and 19) in the e-Manifest system. In addition, a receiving facility would be required to provide the density or specific gravity information for a waste, if it is reporting volumetric measures (gallons, liters, or cubic yards). Finally, the receiving facility would be expected to provide a brief explanation of why the waste was unmanifested, if known.

Receiving facilities would not be expected to obtain generator signatures (Item 15 of the manifest) or transporter signatures (Item 17 of the manifest), nor would they be expected to provide the DOT shipping description of the waste, which would normally appear in Items 9a and 9b (i.e., the identification number, the proper shipping name, the hazard class or division number, and the packing group). Upon completion of the electronic Unmanifested Waste Report, the e-Manifest system would distribute the electronic report to the EPA Regional Administrator (or authorized state). Thus, submission of written reports to federal or state regulatory agencies would no longer be required.

Since receiving facilities should already have access to the e-Manifest system to submit manifests and pay fees, they would readily be able to submit Unmanifested Waste Reports to the system. Notably, generators would not need to participate in these report submissions, so their lack of electronic access is not as important as with today's proposed changes to exceptions. However, such generators could still receive a system-generated email as described in section IV.C.3 of this preamble alerting them of their unmanifested hazardous waste shipment. At that

time, the generators would be asked to register and obtain a RCRAInfo account for e-Manifest system access.

Unlike electronic discrepancy and exception reporting, EPA proposes to impose a user fee, equivalent to the user fees for electronic manifests, on receiving facilities for each submission of an Unmanifested Waste Report. Specifically, EPA is proposing to modify §§ 264.76, 265.76, and 761.216 by adding new paragraph (b) to assess a user fee on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by receiving facilities. The fee would be assessed at the applicable rate for electronic manifest submissions. Under this proposed option, unmanifested waste reports would be collected electronically in the system and thus share marginal costs like those for electronic manifests. Additionally, the Agency notes that unmanifested waste shipments would have incurred a user fee had the shipment used a manifest in compliance with the RCRA regulations and thus imposing a user fee for unmanifested wastes would not impose any new burden. Receiving facilities' monthly invoices would reflect both manifest and unmanifested waste reporting activities for the prior month's activities. EPA requests comment on its proposed approach to integrate Unmanifested Waste Reports into the e-Manifest system and charge the electronic manifest fee rate for these submissions. EPA also requests comment on whether a separate, distinct user fee should be imposed for these reports.

C. What other regulatory changes is EPA addressing in today's this action?

This action proposes changes or regulatory amendments to the manifest requirements under 40 CFR parts 262, 264, 265, and 761. First, this section details technical corrections and conforming changes to certain RCRA and TSCA PCB regulations under 40 CFR parts 262, 264, 265, and 761. These corrections and conforming changes are necessary to remove obsolete requirements, correct typographical errors, and/or improve alignment with the e-Manifest program. The proposed changes to the TSCA PCB regulations are discussed in greater detail below in preamble section IV.C.1. Conforming changes and technical corrections to the RCRA

regulations are discussed in greater detail below in Section IV.C.2.

Second, this action considers certain aspects of the e-Manifest Advisory Board's recommendations about final paper manifest copies returned to generators who do not have access to view copies of completed manifests in the system. Specifically, this section proposes and solicits public comment on adding an email address field to Item 5 of the generator block of the paper manifest so that the e-Manifest system can email copies of completed paper manifests to the generator's email address recorded in that field in lieu of receiving facilities having to mail copies to the generators' postal mail address. Under the proposal, the e-Manifest system would also send notifications to unregistered generators via the email address requesting that they register and obtain an account in e-Manifest for their site. This section also requests comment on mandating that generators register and obtain e-Manifest accounts for access to the e-Manifest system to view their copies of completed manifests. Detailed discussions about the addition of the generator's email address to the manifest form and generator access to final copies of manifests stored in the system are discussed under preamble section IV.C.3.

Third, this action requests additional comment on proposals detailed in the February 2019 *Federal Register* ICR renewal notice regarding modification of the manifest form and instructions to improve the accuracy and precision of waste data reported in the manifest fields at Items 11 (Total Quantity) and 12 (Units of Measure) of the manifest. These proposed form changes would facilitate receiving facilities leveraging the e-Manifest system to populate the corresponding fields of the Waste Received from Off-site (WR) Form as part of the biennial report.

Finally, this action considers a conceptual approach for e-Manifest integration with the biennial report and requests comment on it. The conceptual approach discussion detailed below considers public comments on the February 2019 *Federal Register* ICR notice dated February 8, 2019 (84 FR 2854) regarding data accuracy and precision as well as the addition of certain BR data fields (e.g., form codes) of the WR Form to the manifest form. The e-Manifest Advisory

Board also recommended that EPA integrate the e-Manifest system with the BR. Detailed discussions about the accuracy and precision of data reported in Items 11 and 12 of the manifest as well as EPA's conceptual approach for BR integration are discussed under preamble section IV.C.4.

1. What is EPA proposing for the TSCA PCB regulations?

The PCB regulations at 40 CFR part 761 subpart K require the use of the manifest, EPA Form 8700-22. EPA is proposing several conforming changes to the TSCA PCB regulations at 40 CFR part 761 to clarify the ability to use electronic manifests and the e-Manifest system to fulfill waste tracking and recordkeeping requirements. EPA is proposing to clarify the regulatory text to make it clear that electronic manifests, when used in accordance with 40 CFR part 262 subpart B and the PCB regulations, are legally equivalent to paper manifests. The proposed changes to Exception, Discrepancy, and Unmanifested Waste Reporting outlined in Section B would also apply to the PCB regulations.

First, EPA is proposing to add the Hazardous Waste Electronic Manifest Establishment Act to the Authority section for 40 CFR part 761. The e-Manifest Act was signed into law in 2012 and authorizes the EPA to implement a national electronic manifest system and requires that the costs of developing and operating the new e-Manifest system be recovered from user fees charged to those who use hazardous waste manifests to track off-site shipments of their wastes. Through the Hazardous Waste Electronic Manifest Establishment Act, EPA became responsible for developing an electronic manifest system and publishing regulations to allow for the use of electronic manifests. The e-Manifest Act and current manifest regulations have always applied to all hazardous waste manifests as well as manifests for PCB waste, but the PCB regulations had not been updated to reflect this. EPA is proposing this conforming change in the regulation as a clarification that the e-Manifest Act applies to manifests for PCB waste.

Second, EPA is proposing to add a definition for "electronic manifest" to § 761.3. The proposed definition is similar to the existing definition of "manifest." In addition to being used in

accordance with the instructions included with the manifest form and Subpart K, the electronic manifest must also be used in a manner that complies with §§ 262.20, 262.24, and 262.25. Establishing a definition for electronic manifest is consistent with the structure of the PCB regulations and allows for more streamlined regulatory text in Subpart K.

Third, EPA is proposing to remove some phrases to clarify that electronic signatures are acceptable. EPA proposes to strike several instances of the words “written,” “handwritten,” and “by hand” from the PCB regulations at 40 CFR part 761 subpart K that could be interpreted to require the use of paper manifests. See revised language at §§ 761.210(a)(1), 761.210(a)(2), 761.211(d)(1), 761.211(e)(3), 761.211(f)(3)(i), 761.211(f)(4)(i), 761.213(a)(2), and 761.217(a)(1).

Fourth, EPA is proposing to add a brief overview of the electronic manifest requirements to § 761.207. While the proposed revisions largely incorporate parts of Part 262 subpart B, EPA felt it would improve the clarity and readability of Part 761 subpart K to include two of the most directly applicable subsections, adapted for the PCB context. New § 761.207(g) consists of two subparagraphs. The first subparagraph [§ 761.207(g)(1)] is adapted from § 262.20(a)(3) and clarifies that any person required to prepare a manifest may use an electronic manifest as long as the electronic manifest complies with specific EPA requirements. The second subparagraph [§ 761.207(g)(2)] is adapted from § 262.24(a) and establishes the legal equivalence of electronic manifests to paper manifests. The proposed approach is in line with the other text of Subpart K.

Fifth, in § 761.209, EPA is proposing to clarify how the requirement to provide copies of the manifest to each of the regulated parties is fulfilled by EPA’s e-Manifest system. The proposed language was adapted from § 262.24(a)(2). The final sentence in proposed § 761.209 incorporates the electronic manifest regulations at §§ 262.20, 262.24, and 262.25.

Sixth, EPA is proposing to add two new paragraphs in § 761.213. The first paragraph [§ 761.213(d)] is adapted from § 265.71(h) and clarifies that a commercial storage or disposal facility must follow certain manifest tracking procedures using paper manifests as replacements

for the electronic manifest, if the electronic manifest becomes unavailable and cannot be completed. From the point at which the electronic manifest is no longer available for tracking the PCB shipment, the paper replacement manifest would be completed and managed just as it would be completed and managed with the standard paper manifest form.

Second, EPA is proposing to add new paragraphs to § 761.211 for transporters and § 761.213 for commercial storage or disposal facilities to clarify that they must follow special manifest tracking procedures for manifests that are initiated electronically, but, for whatever reason, cannot be completed electronically. New paragraph (d) [§ 761.211] is adapted from § 263.20(a)(6) of the transporter regulations, “Special procedures when electronic manifest is not available.” In such cases, the transporter in possession of the waste must reproduce sufficient copies of the paper copy that is carried on the transport vehicle (which copy becomes the “replacement” manifest) and complete all further tracking requirements with the replacement manifest. This transporter should produce enough copies so that the transporter in possession of the waste and all subsequent handlers named on the manifest will be able to keep a paper copy for their records. The transporter must also produce two additional copies that will be delivered with the waste to the receiving facility.

The new paragraph (d) [§ 761.213] is adapted from § 265.71(h), of the designated facility regulations “Special procedures applicable to replacement manifests.” When the electronic manifest is not available, the designated facility must likewise sign the remaining printed copies at the time the waste shipment is ultimately delivered to the designated facility. Upon signing the remaining copies to acknowledge the receipt of the waste (or to note discrepancies), the designated facility must provide one copy to the delivering transporter, must keep one copy for its records, and must, within 30 days of receipt of the waste, send one copy to the generator and submit an additional copy to the e-Manifest system for data processing.

Finally, EPA is proposing to add text in § 761.180(b)(3) to allow for the future use of an approved electronic system, such as the RCRAInfo industry application, for the submission of

Forms 7710-53 and 6200-025, Certificates of Disposal, and One-year Exception Reports. Form 7710-53, the Notification of PCB Activity form, as described in § 761.205, is required for all commercial storers, transporters, and disposers of PCB waste and generators with PCB waste subject to the waste storage requirements of § 761.65(b) or (c)(7). Form 6200-025 is required by § 761.180(b)(3) for submission of annual reports by commercial storers and disposers of PCB waste. Certificates of disposal, as described in § 761.218, are required to be sent by the disposer to the generator for every shipment of waste disposed. The certificate of disposal serves as confirmation to the generator that their waste was disposed of within the one-year time frame required by § 761.65(a) and uses information required by the manifest under § 761.218(a)(1) - (2). One-year Exception Reports, as described in § 761.219, flag waste shipments that were not disposed of within the one-year time frame required by § 761.65(a). EPA is proposing to allow the submission of these documents in the future through an EPA-approved electronic system, such as the RCRAInfo Industry Application. This change would not add burden to any regulated parties and, in fact, would serve to reduce burden, as it would simply provide an electronic method of submitting information already required by the PCB regulations.

2. What Technical Corrections and Other Regulatory Amendments is EPA Proposing under Today's Action?

With today's action, EPA is revising certain regulatory requirements that will be obsolete before promulgation of this rule, are now obsolete, or have typographical errors in them. Specifically, EPA is removing paragraph (a)(2)(v)(A) and revising paragraph (a)(2)(v)(B) of 40 CFR 264.71 and 265.71. EPA is also revising the definition of "Paper manifest submissions" of 40 CFR 264.1310 and 265.1310 and the "Manifest transactions subject to fees" regulations of 40 CFR 264.1311 and 265.1311. Beginning June 30, 2021, EPA will no longer accept paper manifest submissions to the PPC via postal mail and will remove the current PPC mailing address from our e-Manifest webpage (www.epa.gov/e-manifest) prior to that sunset date to avoid receipt of paper manifests at that time. Therefore, these regulatory amendments are

necessary to reflect the forthcoming ban on postal mail submissions for paper manifests.

EPA is also revising § 262.20 by removing paragraph (a)(2) from that section. This current regulation is obsolete as it provides the delayed compliance date for use of the old 6-copy manifest form and continuation sheet. EPA standardized the manifest forms in the March 2005 final rule and delayed requiring use of them until September 6, 2005 (70 FR 10815, Mar. 4, 2005).

EPA is revising minor typographical misspelling errors found in paragraphs (a) and (b) of §§ 264.1312 and 265.1312. These sections provide the user fee calculation methodology for determining the fees that receiving facilities are assessed based on their usage of manifests in the system. Existing paragraph (a) contains a typographical misspelling error in the Operations and Maintenance (O&M) Cost formula. Existing paragraph (b) contains typographical misspelling errors in both the O&M Cost formulas for fully electronic manifest usage and all other manifest usage. Specifically, “e-Manifest” is misspelled as “eManifest” in the O&M Cost formula in paragraphs (a) of Parts 264 and 265 and is also similarly misspelled in both the O&M_{fully electronic} Cost and O&M_{all other} Cost formulas in paragraphs (b) of Parts 264 and 265.

EPA is also revising a typographical error found in paragraph (e) of § 761.60. Paragraph (e) accurately refers to “an incinerator approved under § 761.70 or a high-efficiency boiler operating in compliance with § 761.71” twice in the first sentence. However, the fifth sentence uses incorrect citations in a similar reference to “a § 761.60 incinerator or a § 761.61 high-efficiency boiler.” EPA is proposing to correct the regulatory citations in the fifth sentence to read “a § 761.70 incinerator or a § 761.71 high efficiency boiler.”

3. What is EPA Proposing Regarding Generator Access to Final Copies of Manifest?

During the June 2019 Advisory Board meeting, the Advisory Board addressed several issues limiting generator’s use of fully electronic manifests in the e-Manifest system. One issue addressed by the Board and reaffirmed by one public commenter was generators’ inability or reluctance to register in the e-Manifest system so that they have access to fully electronic

manifest tracking. In addition, the public commenter asserted that the low number of generators registered in the e-Manifest system has caused continued burden to receiving facilities, because they must continue to mail paper manifest copies to generators who do not have access to view their manifests in the system. Thus, receiving facilities continue to incur the cost of mailing paper manifest copies to generators, in addition to submitting copies to EPA's e-Manifest system. The commenter suggested that this burden could be eliminated, if 1) EPA mandated generators to register for access to the e-Manifest system, and 2) the Agency designed the system to generate automated email that could notify generators that their completed manifests are available for viewing. The Board agreed automated email notifications could eliminate the need of receiving facilities to mail paper copies of manifests to generators and could incentivize generators to register in the e-Manifest system for access to initiate fully electronic manifests or to view uploaded images of their paper manifests if they continue to track their shipments using paper. The Board also recommended EPA mandate generator registration. The Board reaffirmed this position in its recommendations following the April 2020 Board meeting.¹¹

EPA acknowledges that generators' reluctance or inability to adopt fully electronic manifests or register in the system for access to uploaded images has burdened receiving facilities by requiring them to physically mail manifest copies to generators who do not have access to the e-Manifest system. However, as explained in the e-Manifest One Year Rule, the e-Manifest Act did not mandate generators and other waste handlers to use electronic manifests in the e-Manifest system. Therefore, waste handlers may elect not to track their shipments electronically (i.e., continue to use paper manifests). Consequently, EPA deliberately undertook a phased approach to e-Manifest system implementation so that the Agency could accomplish the Act's objectives to both allow the continued use of paper manifests, while still facilitating the

¹¹ EPA's background paper and related supporting materials, Final e-Manifest Advisory Report/Meeting Minutes for the April 2020 FAC meeting (i.e., the Board's recommendations), and EPA's responses to them are available in the public docket (www.regulations.gov, Docket no. EPA-HQ-OLEM-2020-0075).

adoption of electronic manifesting. For example, EPA established a methodology to tailor user fees based on how manifests are submitted to EPA, with electronic manifests incurring the lowest user fees. EPA also included in the User Fee Final rule a phase-out by June 30, 2021, of mailed paper manifest submissions by receiving facilities. EPA also explained in the User Fee Final Rule, its goal to phase out all paper manifest use after five years, but a decision to do this will await a fuller evaluation of manifest use trends in several years, and possible consultation with the e-Manifest Advisory Board on appropriate steps to facilitate more electronic manifest use.

While EPA continues to explore ways to improve waste handler adoption of e-Manifest, the Agency is proposing an alternative solution to the public commenter's and Board's recommendation. EPA accepts the Advisory Board's recommendation to enhance ability of generators to receive final manifest copies from the e-Manifest system, rather than from receiving facilities. EPA also accepts the Board's recommendation to add space on the manifest form to collect the generator's email address and therefore is proposing to add space in Block 5 of the manifest (i.e., the Generator's Name and Mailing Address block) and require generators to provide an email address in that space. Collecting generators' email addresses on the manifest form would, in turn, allow the e-Manifest system to generate email providing final copies of the manifest to generators, regardless of whether the generator is ultimately registered in e-Manifest. To ensure that the automated email is not undelivered or left unnoticed or unopened, EPA proposes to require the generator to enter an email address associated with the company site and shared with site employees who are directly, or indirectly, involved with arranging the waste shipment for off-site transportation, or who have day-to-day responsibilities of the site's operations.

For generators who track their wastes using a paper manifest or a hybrid manifest but are not registered in the system, an automated email would alert generators that their manifests have been completed and are available in the system for viewing. In addition, the automated email

would alert generators about return manifests from receivers that are late (Exceptions), and when materials received by the facility designated on the manifest do not match with the quantities or types of materials indicated as being shipped by generators (Discrepancies). Specifically, the email would ask a generator to verify the email addresses recorded on the paper manifest before providing them the site's manifest activity tracked in the system. Following email verification, the system would transmit digital copies of a generator's manifests via the verified email address. The email would also provide a link to EPA's e-Manifest user registration webpage and encourage the generator to register at least two Site Managers in RCRAInfo to access their manifests in the e-Manifest system (EPA recommends each site register two Site Managers so a back-up Site Manager is available). For manifests containing wastes that are also listed by the Department of Homeland Security as "chemicals of interest," the generators will only be sent a notification that the manifest was uploaded and will need to register to see the manifests. EPA notes that once a generator registers in e-Manifest, the site would receive a notification email regarding the recent manifest activity tracked in the system on a weekly basis. Under this proposed approach, receiving facilities would no longer be required to mail paper copies of manifests to generators, even if those generators did not yet have e-Manifest access to view their final manifests. Thus, receiving facilities would not incur the cost of mailing paper manifest copies to generators. Therefore, today's proposed rule revises 40 CFR 264.71(a)(2)(iv) and 264.71(b)(4), and 265.71(a)(2)(iv) and 265.71(b)(4) by removing the existing requirement that receiving facilities mail paper manifests to the generators and clarifying that they submit the top copies (Page 1) to the e-Manifest system only.

In addition, EPA is proposing to revise the current 5-copy form to conform with the proposed distribution requirement. Currently, the manifest form printing specification and the distribution notation at the bottom of the second copy (Page 2) of the five-copy set of forms require this copy be sent by the designated facility to the generator. Under today's proposal, this copy (Page 2) would no longer be needed and thus would be removed from the five-copy set of

forms. This proposed rule creates a new four-copy form and eliminates the copy, previously denoted as “Page 2: Designated facility to generator.” The printing specification requirements at § 262.21(f)(5), (6), and (7) are revised to align with the proposed four-copy form. Thus, the copies of the form would be distributed as follows:

Page 1 (top copy): “Designated facility to EPA’s e-Manifest system”;

Page 2: “Designated facility copy”;

Page 3: “Transporter copy”; and,

Page 4 (bottom copy): “Generator’s initial copy.”

The submission of the top copy to the system by the receiving facilities will enable destination states and certain generators (i.e., generators who are registered and can access their final manifest in the system) to receive the manifest final copies from the e-Manifest system. EPA reiterates that, under this proposal, generators who are not registered (and thus cannot access their final manifest in the system) for the e-Manifest system would receive their manifest final copies via email. EPA requests comment on its proposed approach.

EPA also requests comment on whether the Agency should eliminate the designated facility copy (Page 3) from the five-copy form. Under existing federal manifest regulations, all manifest users can use e-Manifest to meet their recordkeeping requirements with respect to the image file copy of the final manifest and can also discard any corresponding paper copy of the manifest, once the image file of the final manifest is available in their account. Thus, designated facilities currently retain Page 3 of the mailed paper manifest for their records but discard it once the corresponding top copy of the completed manifest is available in the system. However, as of June 30, 2021, a designated facility can only submit a paper manifest via an image file of Page 1 of the manifest, and any continuation sheet, or both a data file and the image file corresponding to Page 1 of the manifest, and any continuation sheet, to the e-Manifest system. (As mentioned above in Section IV.C.2 of this preamble, this action makes regulatory amendments to 40 CFR 264.71 and 265.71 to reflect the ban on postal mail submissions for paper manifests beginning on

June 30, 2021.) In view of the fact that submission of paper manifests to the e-Manifest system via postal mail are no longer permissible and thus options available to receiving facilities for submission of paper manifests are limited to either a scanned image upload or a data plus image upload, EPA believes Page 3 of the existing manifest forms could no longer be needed and thus, the copies of the form could be distributed as follows:

Page 1 (top copy): “Designated facility to EPA’s e-Manifest system”;

Page 2: “Transporter facility copy” and;

Page 3: (bottom copy): “Generator’s initial copy”

EPA requests comment on removing Page 3 (Designated facility copy) from the manifest form and continuation sheet.

EPA recognizes some generators may not have email addresses associated with the company site and thus use personal email addresses for their businesses. EPA requests comment on whether such sites should record their site manager’s or site contact’s email address in the proposed email entry field since site managers and site contacts should be familiar with the general circumstances of a waste shipment and the accompanying manifest. Thus, the site manager or site contact would be available to respond promptly to EPA’s or the relevant state regulating Agency’s requests regarding the manifest. EPA also requests comment on the cost savings to receiving facilities under this approach since they would no longer be expected to mail hardcopies of manifests to unregistered generators. In addition, EPA requests comment on whether notification emails should be sent to unregistered generators on a periodic basis, e.g., should the notification email be sent daily, weekly, or bi-weekly?

EPA also acknowledges there may be internet connectivity problems in some regional areas of the U.S. that may cause difficulty for generators to receive the signed and dated manifests via email. Further, some generators may not have email accounts to receive the completed manifests. EPA, however, believes the universe of such generators is very small and thus, if generators have unreliable internet connection or do not have emails, these generators

should make arrangements with their receiving facilities to supply them with paper copies of completed manifests. EPA requests comment on this approach.

In addition, EPA acknowledges today's proposal regarding unregistered generators receiving digital copies of completed manifests from the e-Manifest system rather than receiving paper copies from the receiving facilities via postal mail may not incentivize such generators to register in the e-Manifest system for electronic manifest use. Therefore, EPA requests comment on an alternative option to mandate that generators register for access to the e-Manifest system. Specifically, each generator site would be required to register at least one Site Manager in RCRAInfo for e-Manifest system access (EPA recommends each site register at least two Site Managers). At the time of registration, the user would be required to provide a company email address associated with the company site and shared with site employees who are directly, or indirectly, involved with arranging the waste shipment for off-site transportation, or who have day-to-day responsibilities for the site's operations. This option would require EPA or the states to register the initial Site Manager for a generator site, as is done currently. Once a Site Manager is registered and approved, however, that individual would be responsible for the user registration of future e-Manifest system users at the company site. Under this approach, EPA would not need to collect generator email addresses on the manifest form. In addition, EPA would not email digital copies of manifests to generators as they would be expected to access their accounts to view their manifests. EPA, however, would send notification email to generators regarding their sites' recent manifest activity tracked in the system. Finally, under this alternate approach, as with the proposed approach, receiving facilities would not be required to mail hardcopies of manifests to generators as all generators would be required to register in the system and have access to their manifests.

4. What is EPA proposing or requesting comment on regarding the Manifest Form and Biennial Report Integration with the e-Manifest?

4.1 Background

EPA explained in the February 8, 2019, *Federal Register* notice to renew the Information

Collection Request for the manifest form (EPA form 8700-22/22A) that the Hazardous Waste Electronic Manifest Establishment Act mandates that EPA build the e-Manifest system to provide users the ability to report hazardous waste receipt data applicable to the biennial hazardous waste report in e-Manifest (See 84 FR 2854 at 2857). Besides recommending that EPA integrate manifested-related reports with the e-Manifest system, as discussed in section IV.B of today's notice, the e-Manifest Advisory Board also recommended that EPA focus its efforts to integrate the e-Manifest system with the Biennial Report (also known as BR or the Hazardous Waste Report). The Board believes such integration would encourage users to transition to fully electronic or hybrid manifests, thereby increasing the value of the e-Manifest system and perhaps reducing regulatory recordkeeping and reporting burden of the BR program. The BR is a set of forms (EPA form 8700-13) and instructions for sites to report to EPA and states about their hazardous waste generation, management and final disposition. Specifically, certain sites must submit a report covering each odd-numbered year (called the "collection year" or "reporting year") by March 1 of every even-numbered year ("submission year"). The report may be submitted by paper or electronically to the state or EPA Region. Electronic submissions can be made using the Biennial Report Module in the RCRAInfo Industry Application or the state's own choice of BR software.

Sites must submit a BR if they meet its applicability requirements. In general, sites must submit if they meet the definition of a large quantity generator during the collection year or if they treated, stored, recycled or disposed of RCRA hazardous wastes on-site or shipped hazardous waste offsite to a RCRA permitted treatment, storage, recycling, and disposal facility, or received hazardous wastes from off-site hazardous waste generators without storing the wastes before recycling during the reporting year. Sites that do not meet these criteria are not required to file a report under the federal regulations, e.g., under the federal program, most small and very small quantity generators do not need to file a biennial report. However, state regulations may be more stringent, for example, in requiring more sites to report or more frequent reporting, e.g., on

an annual basis.

The BR consists of a number of forms: the RCRA Subtitle C Site Identification Form (Site ID Form), completed by all reporting sites; the Waste Generation and Management Form (GM Form), completed by generators; the Waste Received from Off-site Form (WR Form), completed by facilities that received hazardous waste shipments from off-site and managed the waste onsite (including subsequent transfer off-site) during the reporting year; and the Off-site Identification Form(s) (OI Forms), completed by sites that received hazardous waste from off-site or sent hazardous waste off-site during the reporting year; however, the OI Form is completed only if required by the state.

In the February 8, 2019, notice, EPA noted that the manifest and BR forms collect several of the same data elements. For example, a WR Form is divided into three identical parts (i.e., waste blocks), labeled Waste 1, Waste 2, and Waste 3 that collect information on the quantities, characteristics, and management of each hazardous waste. A waste block has ten fields to capture this information. EPA compared the WR Form's waste block to the manifest and concluded that the manifest collects most of the waste block's data. The three fields of a waste block not addressed by the manifest are the waste description (Item A in a waste block of the WR Form), form code (Item E in a waste block of the WR Form) and waste density (Item G in a waste block of the WR Form). Form codes describe the general physical and chemical characteristics of a hazardous waste and, although the manifest captures waste quantity, waste density is not mandatory for wastes whose quantity is reported by volume.¹²

The GM Form collects information on the quantities and characteristics of hazardous waste generated on-site and shipped off-site. The GM Form is divided primarily into three blocks labeled: (1) Waste Characteristics, (2) On-site Generation and Management of Hazardous Waste,

¹² For some wastes, the manifest also does not capture all applicable federal or state waste codes. Instructions indicate that up to six federal and state waste codes must be entered to describe each waste. Some wastes carry more than six waste codes. However, for biennial reporting, TSDFs must report all waste codes that apply to the waste reported.

and (3) Off-site Shipment of Hazardous Waste. EPA compared the GM Form's information to the manifest and concluded the manifest contains all the data required for Item B of the Off-site Shipment of Hazardous waste block of the GM Form (i.e., EPA ID Number of TSDF, off-site management method code, and total quantities of waste shipped) and some of the data elements captured in the Waste Characteristics (WC) Block. The manifest does not address the three data fields required for the WC Block as described above for the WR Form [waste description (Item A in a WC block of the GM Form), form code (Item E in a WC block of the GM Form) and waste density (Item H in a WC block of the GM Form)]; nor does it capture the source code (Item D in a WC block of the GM Form), management method code for a source code G25 (Item D in a WC block of the GM Form), foreign country code for source code G62 (Item D in a WC block of the GM Form), waste minimization code (Item F in a WC block of the GM Form), and the radioactive mix field (Item G in a WC block of the GM Form). Source codes describe the type of process or activity (i.e., source) from which a hazardous waste was generated. This code may also be useful to formulate the waste description of a waste for both the GM and WR Forms. In addition, the manifest does not address the BR data required for the On-site Generation and Management of Hazardous Waste block of the GM Form.

To satisfy the objectives of the e-Manifest Act, EPA proposed and requested public comment to modify the paper manifest to include form codes and waste density as well as source codes which are collected on the GM Form (Item D of the GM Form). Comments on EPA's proposed form additions, as an initial step towards full integration of e-Manifest with BR, however, were mixed. While most commenters supported BR integration with the e-Manifest system, some commenters did not support adding the three new BR fields to the manifest form. These commenters asserted their companies would incur significant costs to re-program their IT systems for the proposed form revisions, and the FR notice did not provide adequate information regarding how BR integration would take place.

One commenter asked where the new additions would be placed on the manifest form

and how EPA would use the e-Manifest system to streamline BR requirements. Other commenters stated the proposed BR additions are insufficient and data gaps exist (e.g., density reported in lbs/gal or specific gravity (sg)) between the proposed additional fields and what is expected in a BR. Additionally, these commenters indicated other data elements expected in a BR do not match data currently collected on the manifest. For example, the waste description reported in BR does not match the DOT shipping description reported on the manifest, the quantities of waste reported on manifests are typically estimates and not the actual waste amounts, the units of measure reported on the manifest are different than those required for biennial reporting, and the restriction of the number of waste codes reported on the manifest is insufficient for BR. To populate the BR with manifest data, these inconsistencies would have to be reconciled. Most commenters opposed the proposal and suggested EPA develop a plan and schedule so that their companies could determine the burden reduction and cost savings for full integration of e-Manifest with BR. One state commenter who supported the proposal also acknowledged data gaps exist between the manifest and what is expected in a BR beyond the proposed collection of source codes, form codes, and density information. This commenter also reiterated the sentiments of other commenters regarding the incompatibility of the DOT descriptions recorded on the manifest and the waste descriptions reported for the BR. This commenter indicated that the DOT descriptions on manifests are not a good substitute for a waste description on a BR, because they are generally too generic and do not provide the detail needed for regulatory purposes under the RCRA hazardous waste program. This commenter also suggested these gaps and other data quality issues regarding manifest data collection must be addressed before manifest data can be utilized to populate biennial reporting.

EPA acknowledges the proposed BR additions on the manifest are insufficient to fully integrate with BR and appreciates the commenters' suggestions. Regarding generators reporting estimates of waste quantities on the manifest instead of actual weights, EPA explained in the March 2005 Manifest Forms Revision rule, that the e-Manifest regulations have always required

generators to enter actual quantities of waste shipped and not merely the capacity of the containers selected for shipment. At that time, EPA clarified this point by amending the manifest instructions to Item 11 of the form with additional language emphasizing the generators' responsibility to report quantities shipped and not simply container capacities (See 70 *FR* 10776 at 10819). Further, the March 2005 rule also explained that the manifest regulations have always placed the responsibility for verifying the actual quantities received on the designated facilities. These facilities are required to acknowledge that the quantities of wastes indicated as shipped were received, or otherwise report a significant discrepancy on the manifest if the quantities received do not closely match the generator's "as shipped" quantities. EPA, however, acknowledges that DOT allows shippers (e.g., generators) to enter either net weights or gross weights on shipping papers depending on the mode of transportation (e.g., public highway transportation) for the shipment, and therefore some generators often record net or gross weights in Item 11 of the manifest. Thus, data entries recorded in this field are often inconsistent and consequently are not aligned with the reportable quantities reported for BR purposes.

Regarding a commenter's claim about the inability to list all waste codes on the manifest for biennial reporting, EPA expanded Item 13 of the form so that up to six waste codes could be entered in that field as part of the standardization of the manifest form in the March 2005 rule. EPA decided to limit the number of waste codes for a few reasons. EPA received comments stating that six waste codes normally would be more than adequate to describe hazardous wastes commonly shipped under the manifest. Second, at that time the Agency believed, and continues to believe, that requiring the listing of all waste codes on the manifest creates an unnecessary burden in completing the manifest without improving appreciably the quality of the hazardous waste data (See 70 *FR* 10776 at 10788). Finally, space on the manifest limits our ability to allocate additional space for this purpose. The recent addition of electronic manifests as an acceptable manifest type offers further flexibility. While space limitations on the paper manifest prevent the allocation of new waste codes on the paper manifest form, manifests in the e-

Manifest system do not have this problem. Therefore, if a receiving facility believes the waste codes recorded on the paper manifest are insufficient, it can report an additional list of waste codes for each waste stream in the e-Manifest system along with its submission of a manifest hardcopy plus data upload or add them after-the-fact as part of the corrections process.

Regarding the commenter's assertion that the units of measure reported on the manifest are different than those required for the BR, EPA proposed in the February 8, 2019, *Federal Register* notice to improve the precision or accuracy of the waste data reported on the manifest by amending the current units of measure (i.e., use of decimals or fractions, or smaller units of measure) required to be reported in the "Total Quantity" field of the manifest (i.e., Item 11 of the manifest and Item 29 of the continuation sheet) (See 84 FR 2584 at 2855). EPA requested comment on the proposed changes but did not propose to reconcile them with the current units of measure required for biennial reporting. Therefore, in today's notice, EPA is requesting additional comment on whether the Agency should revise the manifest instructions to allow reporting of decimals or fractions in Item 11 of the manifest or smaller units of measure in Item 12 as detailed in the February 2019 notice. Additionally, EPA is requesting comment on whether EPA should also amend the units of measure currently required for biennial reporting so that they match those for manifests and thus would enable manifest data to be used for quantity reporting in the BR.

Regarding one commenter's question about placement of the proposed additions on the form, EPA requested comment in the February 2019 notice on whether EPA should expand Item 19 of the manifest to include source code, form code, and density information, or create separate new data fields for each. In addition, EPA mentioned in the notice that EPA could add a BR data field in Item 16 of the manifest (EPA Form 8700-22) if EPA removed the current International Shipment field to the continuation sheet.

4.2 *Conceptual Approach*

Based on the public's comments on the February 2019 notice, as well as further

examination of possible integration options, EPA has decided to move forward with early steps towards integrating the e-Manifest with biennial reporting, specifically with respect to the WR form. (EPA may consider integrating the e-Manifest with the GM Form at a later time.)

Although EPA is still in the early stages of this integration effort, the Agency is presenting a conceptual approach in today's notice as an initial step toward encouraging greater conversation and collaboration with the public and ensuring their input is incorporated into our initial plans.

EPA is taking public comment on the approach and the questions and challenges raised below in this preamble. After the close of the comment period, EPA will review the comments to identify areas of support, opposition, concerns, and suggestions; and determine the next steps. EPA will publish periodic updates on our work status and seek further opportunities for collaboration. In addition, EPA will consult with the e-Manifest Advisory Board on a final approach for BR integration.

EPA believes a gradual process for developing the approach is appropriate given that the e-Manifest system is still relatively new and evolving, having begun operation in June 2018. As the system matures, some challenges could be abated through routine system upgrades and increased use of the electronic manifest, which is expected to result in better data quality than the paper form.

The Hazardous Waste e-Manifest Establishment Act mandates that the system provide waste receipt data for the biennial reports that facilities must submit. EPA designed the system to serve as the facilities' primary data source for completing the WR form and were guided by the following additional considerations.

(a) Data Quality. The manifest and WR Form have different purposes, uses and reporting procedures, which result in differences in their data. The manifest's primary purpose is to serve as a chain-of-custody document, ensuring that the shipment arrives at the designated facility intact. It provides essential information for emergency responders (e.g., in case of a spill) and waste handlers. It is initially prepared by the generator or another person acting on its behalf

(e.g., broker, transporter, or designated facility). During transit, the manifest is transferred among waste handlers who take custody of the shipment. It is closed out by the designated facility and uploaded to the national system. After upload, the manifest remains largely untouched, except for corrections by the EPA PPC or persons involved in the shipment (i.e., post-receipt data corrections by the designated facility).

The WR Form's primary purpose is for facilities to share information with the public about their waste receipts (e.g., waste characteristics, management). States may use the information for additional purposes. In addition, facilities maintain data systems about their wastes, which are used for a variety of purposes (e.g., customer accounts/billing, waste management, reporting). Facilities may continually update, edit, and correct their in-house data even after the manifest has been submitted to the national system.

These and other differences between the manifest and WR Form lead to challenges that must be resolved in our integration approach. Examples of such challenges include the following:

1. Data in e-Manifest may be out of sync with a facility's in-house data. As discussed later in this preamble, facilities continually update their in-house data when they find errors or obsolete data. For example, after a manifest is closed out and submitted to the national system, a facility may weigh or test the waste, which can result in information different from what is on the manifest (e.g., revised waste quantity or EPA waste codes). Although EPA has established procedures for facilities to address discrepancies and corrections in the e-Manifest system, it is not clear that all facilities are conducting these procedures in all cases. If they fail to do so, this causes data in the e-Manifest system to be obsolete or incorrect. As such, the manifest data would need to be corrected before it can be used to populate the waste block of the WR Form. Otherwise, BR data quality and its usefulness to the public and regulators would be adversely impacted.

2. Data in the manifest may have errors. Generators and others occasionally make errors (e.g., typographical mistakes, incorrect ID numbers) when completing the manifest form. If an error is unnoticed, the manifest may be uploaded to the national system without the error being resolved.
3. The manifest is designed to describe a specific waste shipment and provide information to particular types of personnel (e.g., spill responders, waste handlers). Some of the manifest's information, such as the DOT shipping description, can require regulatory or other expertise to understand. On the other hand, the WR Form is designed to be readily understood by the general public. For example, the WR Form gives facilities discretion to consolidate and summarize multiple, similar waste receipts into a single WR Form. This enables facilities to provide a clear and understandable summary-level description of its annual waste receipts in comparison with the per-shipment data offered by the manifests.

(b) Burden reduction and ease of use. EPA believes Congress's intent under the Act is for the Agency to develop an approach that minimizes burden and causes minimal disruption to facilities' and states' existing reporting practices and systems. This is consistent with the overall goal of the e-Manifest, i.e., to streamline facility reporting activities by leveraging electronic technology. Further, the Act states that facilities should have the ability to report e-Manifest data in the BR. This mandate suggests that Congress was contemplating an approach that streamlines reporting activities by eliminating redundancies between the manifest and WR Form.

In designing the approach, EPA began with the premise that the most streamlined approach for facilities would be enabling the direct and seamless transfer of data from e-Manifest to the waste blocks of the WR Form. Because of the data quality challenges discussed above, however, a process of direct and seamless transfer may not be possible. It is evident that facilities would need to review, edit, and correct e-Manifest data before it can be transferred to the WR

Form.

To this end, our conceptual approach would establish an intermediate step for the facility to perform these activities before transferring the data to the WR Form. EPA recognizes this step would impose some facility burden, some of which would be offset through automated assistance to facilities in completing the waste description field of the WR Form.

(c) Transparency. Currently there is limited transparency in how facilities review, edit, correct, consolidate and report their waste receipts in the WR Form. Facility in-house data are not generally shared with regulators or the public; as such, it is difficult to confirm the accuracy and completeness of the reported data.

In response to the February 8, 2019, notice, a state commenter asked for the ability to cross check data between the e-Manifest system and WR Form to verify the WR Form data. EPA agrees with this commenter on the importance of having e-Manifest data available as a cross-check tool. In addition, EPA believes regulators should be able to examine how the facility edited, corrected, consolidated, and otherwise modified the e-Manifest data in preparing the WR Form. These capabilities are provided in this approach.

The approach involves three elements, as discussed below. EPA requests comment on the overall approach and any aspects of it. In addition, throughout the discussion, EPA raises questions about specific issues for public comments.

4.2.1 Manifest Form Changes

BR Codes

In our February 2019 notice, EPA compared the data collected on the manifest and BR forms (i.e., GM Form and WR Form) and requested comment on whether BR source codes and form codes should be added to the manifest. Since then, EPA decided to defer integration of the e-Manifest and GM Form and thus would defer adding source codes to the manifest. However, EPA has continued to evaluate form codes.

This approach would be to add form codes to the DESIGNATED FACILITY field of the

manifest, such as in Item 19. Item 19 has four boxes for entering a BR management method code for each waste described in Item 9b. EPA could divide each box in two, allowing a form code and management method code for each waste. The designated facility would choose the code that best corresponds to the physical form or chemical composition of the waste.

EPA believes that collecting form codes on each manifest could make it easier for TSDFs to complete the WR Form. The form code plays an important role in the completion of the WR Form for many facilities. The BR instructions require that a separate waste block of the WR Form be completed for each waste received from each off-site generator. However, as described in the BR Instructions, hazardous waste from the same off-site handler may be aggregated as long as a single form code describes the physical form or chemical composition and all of the waste is managed in a single process system (i.e., same management method code). In other words, multiple wastes may be aggregated in the same waste block of a WR Form as specified, reducing the overall number of WR Form blocks that must be completed and submitted. This is discussed further in Section IV.C.4.2.2 of this preamble.

Under this approach, facilities would record form codes on every manifest. By contrast, a facility's BR is submitted every other year under the federal program. For example, a facility's 2017 BR submission describes activities that occurred in 2017 (odd-numbered years are "reporting years" or "collection years") and was due by March 2018 (even-numbered years are "submission years"). The next reporting year under the federal program was 2019. Under this approach, form codes recorded on manifests in reporting years would be captured in the BR, but codes recorded in submission (non-reporting) years would not.

EPA requests comment on whether form codes should be added to the manifest. Would facilities experience significant burden or inconvenience completing them? If they are added to the form, should receiving facilities be required to record them in both reporting and submission years or should the codes be required only in reporting years? In this latter option, manifests received by the receiving facility from January 1 through December 31 of each reporting year

would require form codes. During submission years, form codes would be optional.

Alternatively, EPA could make form codes completely optional and then only facilities that opt to use this approach described today would record them during the reporting year.

Waste Quantity

Instructions to Item 11 of the manifest directs the generator to enter the total quantity of waste. A generator may enter waste quantity based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Further, the DOT regulations allow shippers (e.g., generators) to enter either net weights or gross weights (i.e., gross weight is the weight of the waste and container) on shipping papers depending on the mode of transportation (e.g., public highway transportation) for the shipment. Therefore, some generators may record net or gross weights in Item 11.

Although it has been routine for generators to record gross weights in Item 11 of the manifest and as a result some designated facilities submit the affected manifests to the e-Manifest system without correcting the inaccurate quantity amount, EPA is considering whether this is appropriate for purposes of manifest completion. For some wastes, the container is intended only as a device in which the waste is stored and transported before being emptied fully and used again. Such containers are not waste and should not be reflected in the reported weight.

EPA is requesting comment on whether a clarification should be added to the manifest's instructions that designated facilities must report all waste quantities in Item 11 of the manifest by net weight. Should this clarification also be extended to generators when they complete the manifest form?

4.2.2 Integration of e-Manifest Data with Biennial Report Module in RCRAInfo Industry Application

As mentioned earlier, the RCRAInfo Industry Application provides the mechanism by which a site may submit information to their state regulator. The application contains the following modules:

- myRCRAid pertains to Site Identification submissions (EPA Form 8700-12)
- Biennial Report pertains to BR submissions (EPA Form 8700-13A/B)
- e-Manifest pertains to manifest submissions (EPA Form 8700-22/22A)

For several reasons, EPA believes the RCRAInfo Industry Application is the appropriate mechanism for sharing e-Manifest data with receiving facilities for completion of WR Forms. As an initial point, a number of designated facilities are using both the Biennial Report and e-Manifest modules for their reporting responsibilities and are therefore already set up and familiar with their functions. For example, all receiving facilities are required to register with the e-Manifest system to receive and pay invoices. Further, EPA is encouraging BR users to prepare and submit reports electronically, such as via the Biennial Report module.¹³ More than 60% of receiving facilities are in states that allow registration with the module.

In addition, the Biennial Report module would be a useful interface for users to review, sort and transfer manifest data from the e-Manifest module for completion of WR Forms. Users obtain permission to use the Biennial Report module, and various types of permission are granted based on each person's role and level of responsibility over the report (e.g., preparer, certifier, site manager).¹⁴ Receiving facilities can select their desired form to complete (e.g., GM Form, WR Form), and the module offers various system tools and controls to assist users with completing them. For example, users have the option of reviewing tables of previously reported data to compare how their current waste quantities compare to previous cycles. They also have the option of retrieving and copying GM Form data from their most recent submission (excluding quantity) into their new GM Form submission.

Similarly, under the approach described today, a receiving facility in the BR module would be given the option of accessing its manifest data from e-Manifest for completing its WR

¹³ The Biennial Report Module is optional. Regulators may choose to use it to collect BR data for sites in their state or may opt to use other software or mechanisms. For a site to submit their BR in the module, its state regulator must indicate that they will accept BR data from the module.

¹⁴ Permission to use a module is granted on a module-by-module basis, except as otherwise specified.

Forms. The information would be retrieved in a tabular format (called the “e-Manifest Data Transfer Table”). The table would present all the wastes received by the receiving facility during the biennial reporting year. Each waste would be presented in a row of the table. The rows would be organized by off-site shipper EPA ID number.

For example, if a receiving facility received 20 manifests from Off-site Shipper 1 and 10 manifests from Off-Site Shipper 2 during the year and each manifest contained four wastes in Item 9b, the table would have 120 rows of wastes. The 80 rows of Off-Site Shipper 1 waste would be presented in the “Off-Site Shipper 1 EPA ID #” field of the table and the 40 rows of Off-Site Shipper 2 waste would be presented in the “Off-Site Shipper 2 EPA ID #” field.

The table would have 11 columns of data about the wastes. Of these, nine would contain data needed to complete a waste block of the WR Form. This includes EPA hazardous waste codes, state hazardous waste codes, EPA ID number of the off-site shipper, form code, management method code, waste quantity, unit of measure, waste density, and density description (i.e., “lbs/gal” or “specific gravity”). There also would be columns for the DOT shipping description and manifest tracking number (MTN).

As such, each row would have 11 data fields. The nine fields described above would be mapped electronically to their corresponding fields of the waste block of a WR Form, enabling data to transfer automatically when prompted by the receiving facility. The two other data fields of the row – DOT shipping description and MTN – are not requested in the waste block and therefore would not be mapped or transferred. However, both fields would be available as a reference. In addition, the table would maintain records (e.g., an audit trail) enabling a person (e.g., a facility or regulator) to determine the MTN of the waste entered into each waste block of a WR Form.

Transfer row
contents

e-Manifest Data Transfer Table										
Manifest Tracking Number	Off-Site Shipper EPA ID	U.S. DOT Shipping Description	EPA Hazardous Waste Codes	State Hazardous Waste Codes	Form Code	Management Code	Qty	UOM	Density	lbs/gal or sp gravity
Off-Site Shipper 1 Name (TXD000000000)										
• 000000000 JJK	TXD000000000	UN3123 Wastes containing ...nos..Hazard Class...	D001		W200	H020	1	Tons		
• 000000001 FLE	TXD000000000	UN3123 Wastes containing corrosives... Hazard Class..	D002		W200	H020	2	Tons		
○ 000000002 GRB	TXD000000000	UN2210 Wastes containing corrosives...nos. Hazard Class..	D002		W202	H040	3	Tons		
○ 000000003 JJK	TXD000000000	UN2210 Waste containing explosives... Hazard Class..	D002, D003		W202	H040	4	Gal	7	lbs/gal
○ 000000000 GRB	TXD000000000	UN543 Wastes containing corrosives... Hazard Class..	D002, D010		W202	H132	100	Tons		
○ 000000002 JJK	TXD000000000	UN5133 Waste containing corrosives... Hazard Class..	D002		W202	H132	3	Tons		
Off-Site Shipper 2 Name (MAD000000000)										

Above is an illustration of the e-Manifest Data Transfer Table. Please note, EPA has considered that this could be done via a system-to-system approach as well. Under our conceptual approach, a receiving facility would transfer the table to one block of a WR Form. To transfer the nine data fields to the corresponding fields of a WR Form, a receiving facility would click on the “Transfer row contents” button. To use the table, a receiving facility would log in to the RCRAInfo Industry Application, access the Biennial Report module, and select the WR Form tab. The facility would then have the option of retrieving the table for completion of its current WR Forms.¹⁵ The facility would be able to add to, delete and otherwise modify the table’s contents so that the data are suitable for the BR. This includes, for example, reviewing the table’s contents for omissions and performing data quality reviews and corrections to eliminate errors. See the discussion later in this section on data reviews and corrections.

In addition, EPA expects the facility to supplement the manifest data, as needed, to ensure all of the information requested on a WR Form is provided. As pointed out by several commenters on the 2019 notice, some manifests do not contain sufficient information on a waste’s EPA and state waste codes and density. These issues and the approach for addressing them are as follows:

¹⁵ The table could be used in the Biennial Report module or downloaded as a flat file. The discussion in this preamble describes how the table would be used in the module.

- **Waste Codes.** The manifest instructions require that, for each waste in Item 9b, preparers provide up to six EPA and state waste codes in Item 13. State waste codes that are not redundant with federal codes also must be entered. The BR, on the other hand, does not limit the number of EPA waste codes reported on a WR Form.¹⁶ State waste codes must be reported as specified. As such, a manifest may not include all of a waste’s federal and state waste codes required for biennial reporting (e.g., a waste with seven or more EPA waste codes). Under this approach, the table would have sufficient space for the facility to add EPA and state waste codes to meet the requirements of the BR.
- **Waste Density.** For each waste in Item 9b of the manifest, preparers must provide the waste quantity in Item 11 and the unit weight or volume in Item 12. If the quantity is reported by volume, the preparer may enter additional descriptive information, such as the waste’s specific gravity, in Item 14 “Special Handling Instructions and Additional Information.” However, the specific gravity is not mandatory, and some manifests lack this information. Item G of a WR Form waste block requires a waste’s quantity and unit of measure to be provided. For a waste reported by volume, its density in lbs/gal or specific gravity must be entered in all cases. As such, a manifest may not include the waste density data needed to complete Item G of a WR Form for wastes reported by volume. Under this approach, the table would include columns for waste density in lbs/gal or specific gravity, allowing the facility to enter this information if missing from the manifest. Currently, density is an optional field in e-Manifest, so it could be entered in advance of this process or when the manifest is entered in the system. In addition, the table could offer a drop-down list for densities. As an initial step,

¹⁶ A WR Form waste block has 12 boxes for EPA waste codes and six boxes for state waste codes. Additional codes can be entered in a “Comments” box.

the facility would set up the drop-down list by pre-populating it with generic densities applicable to specific waste types commonly reported by volume. Then, when the facility discovers a waste's density is missing, it could use the drop-down list to make the appropriate selection. The list could be saved for future biennial reporting cycles.

When the facility decides that a row is complete and free of errors, it would select the row and transfer its data to a WR Form waste block. After transfer, all fields of the block would be complete, except for Item A, waste description. The facility would have to complete Item A subsequently. (See Section IV.C.4.2.3 of this preamble for a discussion of waste descriptions.) The facility would conduct a comprehensive review of all WR Forms as usual before submittal.

EPA notes that a receiving facility might receive multiple shipments of the same or similar wastes from the same off-site shipper during the reporting year. As discussed earlier, the facility could transfer these wastes to the same WR Form waste block if they have the same form code and management method code and if it is otherwise appropriate to do. To this end, the table could offer tools to sort the rows in an off-site shipper's field based on specified criteria (e.g., BR codes), making it easier to identify and group rows with similar wastes. The receiving facility would select the relevant rows and consolidate their data into a single waste block. The table would prevent consolidating dissimilar wastes (e.g., wastes with different form codes or wastes from two or more off-site shippers).

The above paragraphs describe our general conceptual approach for using manifest data to pre-populate WR Form waste blocks. As part of this approach, EPA envisions a process for reviewing and correcting errors in the manifest data before the data are transferred to the waste blocks. EPA understands that completing the manifest can be a complex and fluid process and errors cannot always be avoided. Data requested on the manifest may not be known with full certainty when it is entered. In addition, clerical and other errors inevitably occur, particularly in completing the paper manifest.

The following are the manifest data review and correction activities that would take place after the manifest is submitted to the national system, but before the data are transferred to a WR Form.^{17, 18} The first two activities are currently taking place:

1. Corrections by the EPA PPC. 40 CFR 264.71 requires designated facilities to submit the top copy of each paper-based manifest and continuation sheet to the e-Manifest system. For image only submissions, the PPC enters the manifest data into the e-Manifest system. As part of this process, the PPC may identify and resolve basic errors in the data (e.g., invalid generator or transporter EPA ID number). The PPC follows procedures to contact the designated facility via email, then a phone call. In some cases, the PPC also may contact the generator if the designated facility could not answer the questions.

The e-Manifest system validates uploads for missing and invalid image plus data manifest entries. For example, the system will compare a site's address and EPA ID Number on the manifest to the site's corresponding information in RCRAInfo. If an error is found (e.g., a state-issued ID number that is not included in RCRAInfo's Handler module), EPA will follow up with the site to request correct information.

2. Post-Receipt Manifest Data Corrections. Section 264/265.71(l) establishes procedures for facilities and others to correct manifest data after the manifest has been closed out. Post-receipt data corrections may be submitted at any time. Each correction submission must be electronic and describe the correction in sufficient detail. Other interested persons will be notified and given an opportunity to comment before the correction is finalized.

3. Corrections by the Facility within the e-Manifest Data Transfer Table. Under EPA's conceptual approach, after the facility enters the Biennial Report module and pulls up the table to

¹⁷ In addition to these activities, §§ 264/265.71 and 264/265.72 require facilities to address manifest discrepancies. This includes, for example, noting on the manifest and attempting to resolve significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives. If the discrepancy is not resolved within 15 days after receiving the waste, the facility must immediately submit a letter to EPA describing the discrepancy and attempts to reconcile it and a copy of the manifest or shipping paper at issue.

¹⁸ States have access to e-Manifest and may also make corrections.

complete its WR Forms, the facility would be expected to conduct two types of data review and correction activities:

- Review and correct errors identified by the table. EPA envisions that the table would offer basic data validation tools and flag fields containing possible errors. For example, specific fields of the table could be compared to EPA's official data sources to find errors. This could include comparing EPA and state hazardous waste codes in the table to EPA's official list of waste codes. If a code in the table does not match any code in the list, its field would be flagged. The same could be done for EPA ID numbers and BR codes. The table could also include cross-checks within the same row (e.g., between a waste's form code and management method code). Both fields would be flagged if the management method is not compatible with the form code. Fields with missing data also would be flagged.
- Review and correct all other errors. EPA expects that many errors would remain in the table notwithstanding the above activities. Facilities would be expected to conduct a thorough review based on their in-house knowledge and information (e.g., waste profiles, waste analysis results, in-house data systems).

The facility is responsible for ensuring full compliance with the BR requirements and instructions, regardless of the data and user tools provided.

4.2.3 Issues for Public Comment Regarding Biennial Report Integration

EPA is requesting comment on the following issues:

(a) EPA realizes that the data in the e-Manifest system may contain numerous errors and other issues that must be resolved before the data can be used for BR purposes. Examples include data omissions, invalid EPA ID numbers, state-issued ID numbers that do not show up in EPA's data system, incorrect generator addresses, and typographical errors such as transposed digits in an EPA ID number or BR code. How can EPA improve the conceptual approach to resolve these issues more effectively? How can EPA ensure that the facility has actually

reviewed and corrected the data thoroughly before pre-populating the waste block of the WR Form? Should a facility be prevented from pre-populating the waste block until all flagged errors have been addressed?

(b) Closely related to this, some facilities may not have up-to-date information in the e-Manifest system. For example, after a manifest is closed out and submitted to the national system, a facility may perform weighing, testing or treatment that results in information different from what is on the manifest (e.g., revised EPA waste codes, different management method code). The facility may update its in-house systems but not enter these updates in e-Manifest using the post-receipt data correction procedures at § 264/265.71(l). How extensive is this issue in e-Manifest (i.e., outdated, inaccurate data)? How should EPA revise the conceptual approach to better integrate facility workflows and data management to minimize differences between facility in-house systems and the e-Manifest system?

EPA notes that the post-receipt data correction procedures do not mandate that facilities update the e-Manifest system whenever they find an error. Rather, the regulations state that post-receipt data corrections “may” be submitted at any time by any interested person shown on the manifest. Should EPA revise this language to make post-receipt data corrections mandatory and, if so, for what types of errors? EPA believes the manifest discrepancy procedures at §§ 264/265.71 and 264/265.72 help to clarify this issue. If a designated facility discovers significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper and the quantity and type of hazardous waste it actually receives, it must note the discrepancy on the manifest and attempt to resolve it. For bulk wastes, significant differences in quantity are variations greater than 10 percent in weight. For batch waste, significant differences in quantity are any variation in piece count (e.g., one drum in a truckload). Significant differences in type are obvious differences which can be discovered by inspection or waste analysis (e.g., toxic constituents not reported on the manifest).

Since the facility must record these differences on the manifest if they are discovered

during waste receipt, it is worth considering whether they should be recorded in the e-Manifest system if they are discovered any time after receipt? If so, should they be subject to mandatory data correction procedures? Should other types of errors be brought under mandatory correction procedures, such as missing or invalid EPA ID numbers? If not, how can EPA more effectively encourage facilities to correct them? More broadly, is it necessary for data in the e-Manifest system to be up to date if not used to complete the BR? Or should data in the e-Manifest system generally be viewed as a snapshot of a shipment received by the facility without an expectation that it be current?

(c) Under EPA's approach, the facility would be able to add to, delete and otherwise modify the transfer table's data before pre-populating a WR Form. The data in the table and ultimately reported in the BR should correspond closely to the data stored in e-Manifest. The post-receipt data correction process was established to ensure that e-Manifest data remain accurate and up to date. However, the approach does not extend the data correction process to the transfer table after it has been retrieved in the Biennial Report module at the end of the reporting year.

Essentially, EPA sees a trade-off between closely guarding the table's manifest data against undocumented edits versus creating a system that encourages facilities to make all necessary corrections. EPA does not want to establish an onerous correction process that discourages facilities from making all corrections. Should the transfer table allow the facility to add to, delete and otherwise modify all of the table's contents, or should the table protect some or all of the data from such modifications? Should the table create an audit trail of all of the facility's data modifications? What other user controls and data validations should the table provide?

(d) Aside from the data issues discussed above, would the table provide a relatively straightforward way of completing the waste blocks of the WR Form? Is it reasonable to expect a facility to review, edit, correct, and transfer potentially thousands of rows of wastes to the waste

blocks as described in this approach?

4.2.4 Waste Descriptions on WR Form

The instructions for the waste description (Item A) of the WR Form recommend that a short narrative description of the waste be provided, such as general type; source; type of hazard; and generic chemical name or primary hazardous constituents. Several commenters on the February 2019 notice stated that the waste description is burdensome. We also reviewed data from past WR Form submittals and noticed a wide variation in the information provided. Some forms include a one- or two-word description (e.g., “aerosols,” “hypochlorite solutions”), whereas others include the DOT shipping description. These descriptions are not acceptable because they do not respond to the instructions fully.

EPA has begun considering options for assisting receiving facilities in preparing waste descriptions in the Biennial Report module. Our objective is to improve the quality of the descriptions while streamlining receiving facility activities where possible. To this end, a possible option is to provide automated assistance to receiving facilities in completing the waste description comparable to the “e-Manifest” module’s assistance for preparers of the electronic manifest.

The e-Manifest module offers several types of assistance to preparers of the electronic manifest, such as completing the DOT shipping description in Item 9b of the form. Completion of a DOT shipping description requires knowledge of the DOT regulations, and therefore, assistance may be warranted for some preparers. For example, in the e-Manifest module, if a user wants to enter a DOT ID and proper shipping name into the manifest, the user begins typing this information and a drop-down list will display the proper shipping names that contain the values the user provided. If the user types “fireworks,” the drop-down list will show "UN0333 / Fireworks," "UN0334 / Fireworks," "UN0335 / Fireworks," "UN0336 / Fireworks," and "UN0337 / Fireworks." The user can select the appropriate ID and name. The Hazard Class and Packing Group will be pre-populated based on the user’s selection.

A similar approach could be used for the waste description field of a WR Form waste block in the Biennial Report module. If form codes are added to the manifest, EPA would like to take comment on whether sufficient data would be available to build satisfactory waste descriptions using automated methods. For example, suppose EPA programmed the waste description field to build waste descriptions based on form code, management method code and EPA hazardous waste codes. If a waste were entered into a WR Form waste block with form code W103 (“Spent concentrated acid (5% or more)”), management method code H070 (“Chemical treatment”) and EPA hazardous waste codes D002 and D007, Item A could be pre-populated with “Spent concentrated acid (5% or more) managed by chemical treatment; RCRA characteristic for corrosivity and toxicity.” If a waste were entered with form code W203 (“Concentrated non-halogenated (e.g., non-chlorinated) solvent”), management method code H061 (“Fuel blending prior to energy recovery at another site”) and EPA hazardous waste codes D001 and F003, Item A could be pre-populated with “Concentrated non-halogenated solvent managed by fuel blending prior to energy recovery at another site; RCRA characteristic for ignitability and listed spent solvent waste.”

The receiving facility could reject the system’s suggestion and develop its own description. Alternatively, the facility could edit the suggestion as desired. For example, a pop-up box could prompt the facility to indicate the source of the waste, if known, or chemical names. The receiving facility is ultimately responsible for ensuring a full and accurate waste description regardless of the assistance provided.

A number of issues, however, would need to be resolved for this approach to work. For example, some BR code descriptions are too long to be added to a waste description and need to be shortened to a few words. In addition, some wastes have too many EPA and state waste codes to fit in the waste description field. For these wastes, the system could describe the codes by category (“listed spent solvent waste” for EPA waste codes F001 to F005, “listed wood preserving waste” for EPA waste codes F032, F034 and F035, etc.). For P- and U-listed wastes,

the module could give the chemical's name in addition to the category. For example, the module could say "acute hazardous waste: fluorine" for waste code P056. If a waste code represents multiple chemicals, the module could present them in a drop-down list and the facility could select the correct one. Finally, this approach does not tell us all the relevant information about the waste and thus EPA would like to take comment on how to improve this option to meet the needs of the Biennial Report waste description field. For example, D001 ignitable waste for H040 incineration, from W001 lab packs do not describe the ignitable waste that is being incinerated. The waste could be gasoline, ethanol, or something else. EPA is requesting comment on ways to improve data quality in the waste description field.

There are two additional options EPA would like to take comment on for generating waste descriptions, but these were not expounded previously by the Agency due to the perceived complexity of them. The first is comparing the previous BR cycle's submission of the submitting receiving facility to the manifest data it signed for in the system. The other is adding the waste description to the manifest.

In terms of comparing the waste descriptions to the previous BR submission, the system would compare the previous cycle to the waste codes, form codes, management method codes, and Generators IDs against what was submitted in e-Manifest during the previous year and any additional manifests brought in due to when the waste was generated. If the fields match, then the waste description would be provided with a dropdown or an array of possible waste descriptions (if requested over e-Manifest web services). The receiving facility would choose the appropriate waste description and if necessary, edit it, and submit it with their BR submission. If there is not a match, then the waste description would need to be provided.

There are several issues with this approach. First is how to properly identify CESQGs/VSQGs and slight variations in how their addresses were entered into the system. Other issues revolve around the number of WR forms submitted by receiving facilities. Receiving facilities would still need to analyze each waste stream to determine the appropriate

waste description. Further, from a systems approach, compiling this list based on the criteria provided over the entire universe of WR Forms would require a significant computational effort.

The other option for comment is adding the waste description to the manifest form either on the form itself or in the system as an optional field. This option would provide automation at the time of report compilation for the waste description field, but it would also add another element to the manifest form and if the receiving facility was inconsistent in describing the waste, such inconsistencies could cause confusion when the receiving facility completed its biennial report.

4.2.5 Final BR Integration Questions for Commenters

EPA requests comments on the following:

(a) Earlier in this preamble, it was explained that our conceptual approach for e-Manifest integration with the biennial report does not fully account for the fact that facilities may revise their in-house waste-related data after the manifest has been submitted to the national system, but they may not reflect the revisions in the e-Manifest system. For example, facilities periodically update, and correct data based on waste testing, weighing, management and disposal. Facilities normally reflect these changes in their in-house systems but might not follow the post-receipt data correction procedures to enter them in the e-Manifest system. EPA also discussed that the e-Manifest system contains other data errors and problems, such as missing data, invalid EPA ID numbers, and incorrect management method codes, which must be resolved before the data can be reported in the WR Form. EPA asked for comments on how this approach could address these problems more effectively.

EPA is now raising these challenges again in the larger context of evaluating whether they can be overcome in developing an approach that is beneficial to facilities and states. In other words, can the data problems in e-Manifest be addressed effectively (e.g., through mandatory post-receipt data corrections, additional data reviews) without placing unnecessary burden on facilities and states and discouraging them from adopting the overall approach?

(b) Currently, facilities preparing the WR Form at the end of a reporting year may evaluate, consolidate, and summarize a year's worth of shipment-level data, to thereby report it in a consistent, uniform manner. Should EPA enhance the approach to provide a better ability for facilities to evaluate, consolidate and summarize e-Manifest data when pre-populating the WR Form? What additional capabilities do facilities' in-house systems provide for reviewing, correcting, consolidating, and summarizing data that should be offered by the table in this approach?

(c) Would BR data quality and usefulness be impacted under this approach, and if so, how?

(d) Would this approach increase burden and complexity to facilities or regulators under the manifest or BR program? For example, some facilities could experience significant incremental burden in reviewing, editing, correcting, and transferring manifest data to the waste blocks of the WR Form. However, would their incremental burden be offset if the module pre-populates the waste description field of each block?

(e) After a facility's WR Forms are submitted to the state or EPA Region, the module could offer these completed forms (without waste quantity) to the facility for the next BR cycle. The facility would have the option of completing these pre-populated forms or preparing new ones. Would these pre-populated forms streamline the facility's activities without compromising data quality?

(f) As discussed earlier in this preamble, the PPC has experienced difficulty in entering image files and hardcopies of paper copies of manifests into the e-Manifest system due to incorrect, illegible or incomplete data. This has slowed the PPC's data entry, resulting in tens of thousands of paper manifests not being entered into the system in a timely manner. If a form is not entered into the system, it would not be included in the e-Manifest Data Transfer Table in this approach. How should these forms be addressed under the approach? At the end of the reporting year, should facilities receive a list of manifests that have not been entered into e-

Manifest so they can incorporate the wastes into WR Forms using other data?

(g) As stated previously in this preamble, EPA may consider integrating the e-Manifest system with the GM Form at a later time. EPA, however, believes the Agency could also establish an approach to integrate the e-Manifest system with the GM Form that is analogous to our conceptual approach for e-Manifest integration with the WR Form. For instance, EPA could:

- (1) Use eight of the nine data fields described above (i.e., EPA hazardous waste codes, state hazardous waste codes, form code, management method code for off-site shipments, waste quantity shipped off-site, unit of measure, waste density, and density description (i.e., “lbs/gal” or “specific gravity”));
- (2) use the EPA ID number of the designated facility receiving the off-site shipment; and
- (3) add the source code and waste minimization code to the manifest to map these manifest data electronically to their corresponding blocks of the GM Form for e-Manifest integration. These manifest data could be transferred automatically from a table to the WC block and the Off-site Shipment of Hazardous Waste block of the GM Form when prompted by the LQG.

EPA requests comment on whether the Agency should establish a similar conceptual approach for e-Manifest integration with the GM Form. Would such an approach work for the GM Form? Please consider the relevant issues and questions addressed above in this section of the preamble as well as other issues and questions detailed throughout section IV.C.4 to provide comment.

(h) As stated in section IV.C.4.2.1, EPA would require the receiving facility to report the form code on the manifest for each waste stream reported in Item 9b. Given that both the GM Form and the WR Form require the form code, would LQGs be amenable to EPA requiring the receiving facility to report the form code on the manifest on their behalf and ultimately using it for the GM Form? Would receiving facilities be amenable to reporting the form code on the manifest in lieu of the LQG reporting it?

D. Summary of Requests for Public Comment

EPA requests comments on various aspects of this proposed rule throughout the

preamble. This section summarizes each request at a high level. Please refer to the relevant sections for more in-depth discussion of the relevant issues for public comment.

Regarding submitting export manifests to EPA's e-Manifest system (discussed in preamble section IV.A.3), EPA requests comment on the following:

- EPA's proposal to revise 40 CFR 262.83(c) by adopting the existing manifest provisions at §§ 262.20(a)(3) and 262.24 for electronic manifest use and the electronic signature requirements at § 262.25 for export manifests. If these provisions are finalized as proposed, a person exporting a shipment out of the U.S. (i.e., a generator or a recognized trader located separate from the site initiating the shipment) may, in lieu of using a paper manifest form, use an electronic manifest to track the export shipment within the United States.
- EPA's proposal to add new provisions under § 262.83. These would require an exporter to submit the top copy of a manifest form and continuation sheet (whether paper or electronic) to EPA for processing, in accordance with the proposal for export shipments described in this section of the preamble. The new provisions would also require the exporter to pay the requisite processing fee for the submission using the existing fee provisions under 40 CFR part 265 subpart FF. EPA is proposing new paragraphs (c)(4) through (c)(8) under § 262.83(c). If finalized, an exporter who elects to use an electronic manifest and continuation sheet for an export shipment, would be required to complete, sign, and submit the manifest and continuation sheet electronically in the e-Manifest system for the waste shipment within 30 days of receipt of the electronic manifest signed by the last transporter who carried the export shipment to a U.S. seaport for loading onto an international carrier or to a U.S. road or rail port of exit.
- EPA's proposal to adopt the fee provisions of the electronic hazardous waste manifest program under 40 CFR part 265 subpart FF (40 CFR 265.1300, 265.1311, 265.1312, 265.1313, 265.1314, 265.1315, and 265.1316) for hazardous waste export shipments. If

finalized, exporters of a waste shipment subject to the manifest requirements would be expected to make payments to EPA for manifest activities conducted during the prior month per § 265.1314. Additionally, the proposed amendments would require any party acting as the U.S. exporter that originated the manifest for an export shipment of hazardous waste in accordance with the manifest requirements under 40 CFR part 262 subpart B and § 262.83(c), whether they be a generator, receiving facility, or recognized trader, to submit the export manifests to the system and pay the requisite fees.

- EPA’s proposal to revise § 263.20(g)(3), which currently requires the transporter to provide a copy of the export manifest to the generator. Today’s proposal would allow the collection of manifest data in the e-Manifest system, making the current requirement unnecessary.
- EPA’s proposal to remove the current transporter requirement in § 263.20(g)(4)(i). EPA has determined that transporters are not best suited for submitting the export manifest to the system and paying the requisite processing fee based on the above modification to § 263.20(g)(3).
- EPA’s proposal to remove 40 CFR 263.20(g)(4)(ii), which lists the “AES filing compliance date” promulgated in the hazardous waste import/export final rule dated November 28, 2016 (81 FR 85696). The AES filing compliance date was specified as December 31, 2017, in a *Federal Register* notice dated August 28, 2017 (82 FR 41015). That compliance date has passed, and as such the requirement for the transporter to provide a paper copy of the manifest to a U.S. customs official at the point of departure for shipments initiated prior to the AES filing is now obsolete.

In addition, EPA requests information regarding whether the proposed changes would work for foreign transporters who transport export shipments to and across the U.S. border. EPA also requests information regarding how many foreign transporters currently transport such shipments within the United States.

Regarding manifest form changes related to export and import hazardous waste shipments (discussed in preamble section IV.A.4), EPA requests comment on the following:

- EPA's proposal to move the International Shipments field (i.e., Item 16) from the manifest to the continuation sheet and add new fields for consent numbers and the exporter's EPA Identification number and email address to the International Shipments field. If finalized, EPA would remove the International Shipments field from the manifest and re-designate it as Items 33a and 33b on the continuation sheet as shown on the draft form. EPA would also revise the current manifest instructions for completing the International Shipments field to reflect these new changes. A proposed revised version of the continuation sheet (EPA Form 8700-22A) reflecting these proposed changes is available in the docket for this rulemaking.

Regarding proposals that only impact import shipments (discussed in preamble section IV.A.5), EPA requests comment on the following:

- EPA's proposal to delete the requirement in 40 CFR 262.84(c)(4) that the importer provide an additional copy of the manifest to the transporter to be submitted by the receiving facility to EPA per §§ 264.71(a)(3) and 265.71(a)(3). This additional copy of the manifest is no longer necessary because the receiving facility is now required to always submit the top copy of the paper manifest and any continuation sheets to the e-Manifest system.

Regarding additional proposed changes to international shipment requirements (discussed in preamble section IV.A.6), EPA requests comment on the following:

- EPA's proposal to revise the export and import shipment international movement document-related requirements to more closely link the manifest data with the international movement document data.

Regarding proposals to revise manifest requirements applicable to Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports (discussed in preamble section IV.B.1-

3), EPA requests comment on the following:

- EPA's proposal to allow generators using electronic or hybrid manifests to use the e-Manifest system to satisfy exception reporting requirements. EPA is proposing to restrict electronic exception reporting to manifested shipments using electronic manifests (hybrid or fully electronic) pursuant to § 262.24(c).
- EPA's proposal to revise the current 35/45-day LQG exception reporting timeframes in § 262.42(a) and (c)(2), and §761.217(a) and (b) to better conform to timeframes for submittal and processing of paper manifests in the e-Manifest system, thus adjusting it to a 40/50-day timeframe. EPA is not proposing additional time for SQGs to verify receipt of their shipments by the destination facility. The current SQG timeframe for verification of shipment delivery is 60 days (§ 262.42(b)).
- EPA's proposal to integrate Discrepancy Reports into the e-Manifest system, which includes four elements: 1) A copy of the manifest at issue; 2) the significant discrepancy type (i.e., significant difference in quantity or type); 3) date of signature of the receiving facility; and 4) a description explaining the discrepancy and attempts to reconcile it.
- EPA's proposal to allow receiving facilities to use the e-Manifest system to satisfy discrepancy reporting requirements and its proposal to adjust the discrepancy reporting timeframe to allow receiving facilities up to 20 days to reconcile a shipment with the generator and/or transporter for such discrepancies. Unlike our proposed restriction to limit electronic exception reporting to electronic manifests, EPA is proposing to extend electronic reporting of Discrepancy Reports to all manifest submission types, including paper.
- Whether or not there should be a limit on our discrepancy reporting proposal to manifests that originated electronically (i.e., fully electronic or hybrid) in the e-Manifest system, as well as if there are other approaches EPA should consider for electronic discrepancy reporting associated with digital copies of paper manifests.

- EPA's consideration of an alternate approach that would eliminate the requirement for Discrepancy Reports altogether, and instead, address discrepancy events through the e-Manifest corrections process. Under this approach, receiving facilities or EPA's PPC would upload/enter discrepancies identified under Item 18. Generators who had e-Manifest system access would receive email alerts regarding Item 18 discrepancies, review the final manifest in e-Manifest, and submit post-receipt manifest corrections.
- EPA's proposal to accept only electronic submissions of Unmanifested Waste Reports to the system by the receiving facility, with the goal of integrating Unmanifested Waste Reports into the e-Manifest system. EPA would not accept Unmanifested Waste Reports through a written, hard copy report. EPA would revise the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and §761.216 for PCB wastes. Unlike electronic discrepancy and exception reporting, EPA proposes to impose a user fee, equivalent to the user fees for electronic manifests, on receiving facilities for each submission of an Unmanifested Waste Report.
- EPA's proposed approach to integrate Unmanifested Waste Reports into the e-Manifest system (by only accepting electronic submissions of Unmanifested Waste Reports to the system by the receiving facility and revising the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and §761.216 for PCB wastes) and charge the electronic manifest fee rate for these submissions. EPA also requests comment on whether a separate, distinct user fee should be imposed for these reports.

Regarding other proposals (discussed in preamble section IV.C), EPA requests comment on the following:

- Technical corrections and conforming changes to certain RCRA and TSCA PCB regulations under 40 CFR parts 262, 264, 265, and 761. These corrections and conforming changes are necessary to remove obsolete requirements, correct typographical errors, and/or improve alignment with the e-Manifest program.

- EPA's proposal to add an email address field to Item 5 of the generator block of the paper manifest so that the e-Manifest system can email copies of completed paper manifests to the generator's email address in lieu of receiving facilities having to mail copies to the generators' postal mail address. Under the proposal, the e-Manifest system would also send notifications to unregistered generators via the email address requesting that they register and obtain an account in e-Manifest for their site.
- EPA's request for comment on whether to mandate that generators register and obtain e-Manifest accounts for access to the e-Manifest system to view their copies of completed manifests.
- Proposals detailed in the February 2019 *Federal Register* ICR renewal notice regarding modification of the manifest form and instructions to improve the accuracy and precision of waste data reported in the manifest fields at Items 11 (Total Quantity) and 12 (Units of Measure) of the manifest. These proposed form changes would facilitate receiving facilities leveraging the e-Manifest system to populate the corresponding fields of the Waste Received from Off-site (WR) Form as part of the biennial report.
- EPA's consideration of a conceptual approach for e-Manifest integration with the biennial report, particularly regarding data accuracy and precision as well as the addition of certain BR data fields (e.g., form codes) of the WR Form to the manifest form. There are specific questions raised in preamble section IV.C.4.2.3 and IV.C.4.2.5.
- Potential ways to improve data quality in the waste description field (see preamble section IV.C.4.2.4).
- EPA's proposal to compare the previous BR cycle's submission of the submitting receiving facility to the manifest data it signed for in the system.
- EPA's proposal to add the waste description to the manifest.
- Whether or not EPA should establish a similar conceptual approach for e-Manifest integration with the GM Form. Would such an approach work for the GM Form?

V. State Implementation

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and of the Hazardous Waste Electronic Manifest Establishment Act, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to administer the program and issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, with the adoption of RCRA section 3006(g), which was added by HSWA, new requirements and prohibitions imposed under the HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

The e-Manifest Act contains similar authority to HSWA with respect to federal and state implementation responsibilities in RCRA authorized states. Section 2(g)(3) of the e-Manifest Act, entitled Administration, provides that EPA shall carry out regulations promulgated under

the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. Also, section 2(g)(2) of the Act provides that any regulation promulgated by EPA under the e-Manifest Act shall take effect in each state (under federal authority) on the same effective date that EPA specifies in its promulgating regulation. Thus, the result is that regulations promulgated by EPA under the e-Manifest Act, like HSWA-based regulations, are implemented and enforced by EPA until the states are authorized to carry them out.

Authorized states generally are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. However, as EPA explained previously when adopting manifest form revisions to fully standardize the RCRA manifest, the hazardous waste manifest is not governed by this authorization policy. Rather, the RCRA manifest requires strict consistency in its implementation, so that EPA changes to federal manifest form requirements must be implemented consistently in the states. See 70 FR 10776 at 10810 (March 4, 2005). This is so, whether the manifest program change is based on base RCRA or on e-Manifest Act authority.

TSCA does not grant EPA authority to authorize states to administer the program. EPA directly implements the federal PCB regulations in all states and territories.

B. Legal Authority for This Rule's Regulatory Changes and Implications

Several of the provisions in this proposed rule are based on the authority of the e-Manifest Act and are listed in the table below. These provisions (if finalized) would be implemented and enforced by EPA in all states consistently on the effective date of the final rule. States must adopt the authorizable e-Manifest Act-based provisions of this final rule in order to enforce them under state law, and to maintain manifest program consistency. However, EPA will continue to implement and enforce these provisions until such time as the state modifies its authorized program to adopt these provisions and receives authorization from EPA for the program modification.

Regulation	Subject
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§ 262.42(d) – (e)	Submission of Electronic Exception Reports to the e-Manifest system
§ 262.83(c)(4)	Exporters required electronic or paper manifest to the system
§ 262.83(c)(5)	Imposition of fees on exporters for their manifest submission
§ 262.83(c)(7)	Exporters’ replacement manifests
§ 262.83(c)(8)	Exporters’ post receipt data corrections
§ 264.72(c)(1) – (4), § 265.72(c)(1) – (c)(4),	Submission of Electronic Discrepancy Reports to the e-Manifest System
§ 264.76(a), § 265.76(a)	Submission of Electronic Unmanifested Waste Reports to the e-Manifest system
§ 264.76(b), § 265.76(b)	Imposition of fees to receiving facilities for their Electronic Unmanifested Waste Report submission

In contrast, the manifest-related report provisions at 40 CFR 262.42 (a)(1) – (2), 262.42(c)(2), 264.72(c), and 265.72(c) are based on the base RCRA statutory authority. Because these provisions would be finalized under RCRA base program authority, these regulatory changes would not become effective in authorized states until the regulatory changes are adopted under state law and EPA authorizes the state program modification. States must adopt the regulatory changes in their authorized programs to maintain manifest program consistency. In unauthorized states, these regulations would become effective on the effective date of this final rule. Because TSCA is not administered by state programs, all proposed changes to 40 CFR part 761 would become effective in all states and territories on the effective date of the rule.

C. Conforming Changes to 40 CFR 271.10 and 271.12

This proposed rule also includes conforming changes to 40 CFR 271.10 and 271.12, addressing the requirements for hazardous waste generators and exporters, and receiving facilities, respectively, that must be included in authorized state programs to maintain consistency with the federal program. Other conforming changes to § 271.10 regarding regulatory amendments to the hazardous waste export and import regulations are discussed in preamble section V.D. The first change at § 271.10(j)(i) clarifies that authorized state programs must include requirements for electronic Exception Reports in the EPA's e-Manifest system, in lieu of sending signed copies to the EPA Regional Administrator or the states. The second change at § 271.10(j)(ii) clarifies that authorized state programs must include a requirement that hazardous waste exporters submit a signed copy of each paper manifest and continuation sheet (or the data from paper manifests) to the EPA's e-Manifest system, in lieu of providing additional copies of the manifest to the hazardous waste transporters. These modifications are necessary to effectuate the intent of Congress that under the e-Manifest Act, the e-Manifest system will operate as a national, one-stop reporting hub for manifests and data. When electronic Exception Reports are implemented in the e-Manifest system, EPA expects that the states with such tracking programs will obtain their manifest copies (and data) and electronic Exception Reports from e-Manifest, rather than requiring regulated entities to mail their manifests or exception reports to these states.

Finally, the e-Manifest-related amendments at § 271.12(i) and (k) must be included in authorized state programs for electronic Discrepancy Reports and Unmanifested Waste Reports to maintain consistency with the federal program. The amendments to § 271.12(i) clarify that authorized programs must include requirements that designated or receiving facilities submit electronic Discrepancy Reports and Unmanifested Waste Reports in the EPA's e-Manifest system, in lieu of sending signed copies to the states. The amendment at § 271.12(k) clarifies that authorized state programs must include requirements for hazardous waste management facilities and facilities submitting electronic Unmanifested Waste Reports in the e-Manifest system to pay user

fees to EPA to recover all costs related to the development and operation of an electronic hazardous waste manifest system (e-Manifest system).

Several of these states with manifest tracking programs assess their own fees to offset the costs of administering their state manifest tracking programs, or they may assess waste generation or management fees to support state programs, based on manifest data in their state tracking systems. It is likely that many of these state manifest tracking programs and related fees may continue to operate for the foreseeable future. EPA emphasizes that the federal user fees that are proposed in this regulation are solely to offset EPA's costs in developing and operating the e-Manifest system. It is not the purpose of this regulation to suspend, reduce, or otherwise impact the existing state fees that support states' manifest tracking programs, or the fees levied by state programs on waste generation or management. EPA is not now in a position to predict what, if any, impact this federal user fee regulation may have on any such state fee collection programs.

D. Provisions of the Proposed Rule That Are Not Authorizable

There are some provisions in this proposed rule that can be administered and enforced only by EPA, and not by authorized states. First, the group of non-authorizable requirements included in this proposed rule are § 262.21(f)(5), (6), and (7). These provisions together announce the revised printing specification for the proposed four-copy paper manifest and continuation sheet paper forms, the revised copy distribution requirements to be printed on each copy of the form, and the revised specification for printing the appropriate manifest instructions on the back of the form copies. If finalized, state programs are not required to take any action respecting these regulatory changes to the printing specifications, and they will take effect in all states on the effective date of this rule. The RCRA manifest requires strict consistency in its implementation, so that an EPA change to federal manifest form requirements must be implemented consistently in the states. See generally 70 FR 10776 at 10810 (March 4, 2005).

The second group of non-authorizable requirements in this proposed rule are regulatory amendments to certain fee methodology and related fee implementation provisions set forth in

subpart FF of 40 CFR parts 264 and 265. These requirements include definitions relevant to the program's fee calculations (§§ 264.1311, 265.1311), and the user fee calculation methodology (§§ 264.1312, 265.1312). These user fee provisions in subpart FF are based on the authority of the e-Manifest Act, and (if finalized) would be implemented and enforced by EPA on the effective date of the final rule and perpetually thereafter. The user fee provisions of subpart FF describe the methods and processes that EPA alone will use in setting fees to recover its program costs, and in administering and enforcing the user fee requirements. Therefore, states cannot be authorized to implement or enforce any of the subpart FF provisions.

Although states cannot receive authorization to administer or enforce the federal government's e-Manifest program user fees, authorized state programs must still include the content of or references to the subpart FF requirements. This is necessary to ensure that members of their regulated communities will be on notice of their responsibilities to pay user fees to the EPA e-Manifest system when they utilize the system. Authorized state programs must either adopt or reference appropriately the user fee requirements of this final rule.¹³ However, when a state adopts the user fee provisions of this rule, the state must not replace federal or EPA references with state references or terms that would suggest the collection or implementation of these user fees by the state.

The last group of non-authorizable provisions in this proposed rule are regulatory amendments to certain export and import regulations detailed in preamble sections IV.A.4, IV.A.5, and IV.A.6 are not authorizable. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in the regulations discussed in those preamble sections. This approach of having federal, rather than state, administering of the import/export functions promotes national coordination, uniformity, and the expeditious transmission of information between the United States and foreign countries.

Although states do not receive authorization to administer the federal government's

import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in certain other RCRA hazardous waste regulations, state programs are still required to adopt the provisions in this rule to maintain their equivalency with the federal program (see 40 CFR 271.10(a) and (d) which will also be amended in this rule).

This rule contains many amendments to the export and import shipment international movement document- related requirements under 40 CFR part 262 subpart H to more closely link the manifest data with the international movement document data. The rule also contains conforming import and export-related amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 267, and 271, almost all of which are more stringent.

The states that have already adopted 40 CFR part 262 subparts H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations discussed in this rule must adopt the revisions to those provisions in this final rule. When a state adopts the import/export provisions in this rule (if final), they must not replace federal or international references or terms with state references or terms.

VI. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it: 1) materially alters the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and 2) may raise novel legal or policy issues. Budgetary impacts of the e-Manifest user fee program may be altered by this rulemaking as it establishes fees for hazardous waste exporters. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA prepared an economic analysis of the

potential costs and benefits associated with this action. This analysis (titled “The Regulatory Impact Analysis for EPA’s Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections”) is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2712.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized [here](#).

Implementation of this e-Manifest rule will impose new information collection requirements on the regulated community who must use the manifest for tracking hazardous waste export shipments, and who must prepare manifest-related reports such as exception, discrepancy, and unmanifested waste reports to address specific problems that arise in the use of the manifest. The rule also consists of a series of clarifications to the manifest regulations under RCRA and TSCA that are not expected to result in behavior changes by the regulated community, and therefore do not have associated costs.

Generally, the generators, transporters, designated facilities, and emergency response teams (in the case of accidents) are the primary users of manifests. However, EPA may review these documents during a facility inspection to make sure proper records are being kept and regulations are complied with. EPA also reviews and responds to exception reports, discrepancy reports, and un-manifested waste reports. The public will also have access to data in the e-Manifest system.

Although the primary effect of this proposed rule will be to replace current paper-based information requirements with electronic-based requirements to submit or retain the same shipment information, there could be minor additions or changes to the information collection

requirements, such as information that may be provided to establish user accounts and fee payment accounts, information submitted for identity management, as well as waste profile or other information that may be useful for the creation and submission of electronic manifests and manifest-related reports.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: The recordkeeping and notification requirements are required for parties performing relevant manifest activities (e.g., submitting export manifests).

These requirements are described in detail in the ICR Supporting Statement.

Estimated number of respondents: 203,936.

Frequency of response: Per Shipment.

Total estimated burden: 2,458,568 hours.

Total estimated cost: \$121,690,615, includes \$27,400,688 annualized capital costs or O&M costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves burden on the small entities subject to the rule. All entities that manifest waste domestically are expected to benefit from cost savings. However, the proposed rule does result in net costs for hazardous waste exporters. In section 4.2 of the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections*, EPA considers two “worst-case” scenarios to analyze the upper bounds of net costs to 111 small exporter entities. Under both scenarios, the proposed rule would not result in significant economic impact on a substantial number of small entities with respect to exporter small entities because the upper bound of costs for the regulation per entity does not exceed one percent or three percent of annual revenues for 20 percent of small entities in a sector, or 100 small entities total.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As documented in the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* found in the docket, EPA finds that the rule would not result in annual expenditures exceeding \$100 million annually and therefore would not be subject to requirements of section 202 of UMRA as listed above.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on

the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not impose any new requirements on tribal officials, nor will it impose substantial direct compliance costs on them. This action will not create a mandate for tribal governments, i.e., there are no authorized tribal programs that will require revision and reauthorization on account of the e-Manifest system and regulatory program requirements. Nor do we believe that the e-Manifest system will impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, because the rule would not increase risk related to exposure to hazardous materials, the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a “significant energy action” under Executive Order 13211, “Actions Concerning Regulations that Affect Energy Supply, Distribution, or Use” (May 18, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule would not directly regulate energy production or consumption and is expected to result in net cost savings.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Findings are documented in the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* found in the docket. Proposed changes in this proposed rule, however, will serve to increase public transparency of hazardous waste activity in communities, including greater access to information regarding hazardous waste shipments exported out of the U.S. and information regarding irregularities in the manifest process, e.g., manifest exception, discrepancy, and unmanifested waste reporting.

List of Subjects

40 CFR Part 260

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements

40 CFR Part 262

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

40 CFR Part 265

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 267

Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 761

Environmental protection, Manifest, Polychlorinated biphenyls.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 260, 261, 262, 263, 264, 265, 267, 271, and 761 as follows:

PART 260 – HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921- 6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g and 6974.

2. Section 260.2 amends paragraphs (d)(1) and (2) by adding a sentence at the end of each paragraph to read as follows:

§260.2 Availability of information; confidentiality of information

* * * * *

(d)(1) *** After [Effective Date of the Final Rule], no claim of business confidentiality may be asserted by any person with respect to information contained in hazardous secondary material export documents prepared, used and submitted under §261.4(a)(25), whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) *** After [Effective Date of the Final Rule], EPA will make available to the public under this section any hazardous secondary material export documents prepared, used and submitted under §261.4(a)(25) on March 1 of the calendar year after the related hazardous secondary material exports occur, when these documents are considered by EPA to be final documents.

* * * * *

PART 261 – IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.4 is amended by revising paragraphs (a)(25)(i)(A), (H), and (v) to read as follows:

§261.4 Exclusions

(a) ***

(25) ***

(i) ***

(A) Name, site address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

(H) The name and site address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section.

* * * * *

5. Section 261.6 is amended by revising paragraphs (a)(3)(i)(A) and (B) to read as follows:

§261.6 Requirements for recyclable materials.

(a) ***

(3) ***

(i) ***

(A) The person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to an exporter in §262.83 with the exception of §262.83(c);

(B) Transporters transporting a shipment for export or import must comply with the movement document requirements listed in §263.20(a)(2) and (c).

* * * * *

6. Section 261.39 is amended by revising paragraphs (a)(5)(i)(A), (F), (a)(5)(v)(B) is amended by revising the language before the colon in the first sentence; and revising paragraph (a)(5)(xi).

The revisions to read as follows:

§261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(i) * * *

(A) Name, site address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(F) The name and site address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(v) ***

(B) The exporter or a U.S. authorized agent must: * * *

* * * * *

(xi) Annual reports must be submitted to EPA using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or authorized state inspector. No CRT exporter may be held liable for the inability to produce an annual report

for inspection under this section if the CRT exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

7. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6912, 6922 - 6925, 6937, 6938 and 6939g.

§262.20 [Amended]

8. Section 262.20 is amended by removing and reserving paragraph (a)(2).

9. Section 262.21 is amended by revising paragraphs (f)(5), (6), and (7) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

(f) ***

(5) The manifest and continuation sheet must be printed as four-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all four copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): “Designated facility to EPA's e-Manifest system”;

(ii) Page 2: “Designated facility copy”;

(iii) Page 3: “Transporter copy”; and

(iv) Page 4 (bottom copy): “Generator's initial copy.”

(7) The instructions for the manifest form (EPA Form 8700-22) and the manifest continuation sheet (EPA Form 8700-22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050-0039 and published to the e-Manifest program's website. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700-22.

(A) The “Instructions for Generators” on Copy 4;

(B) The “Instructions for Transporters” on Copy 3; and

(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 2.

(ii) Manifest Form 8700-22A.

(A) The “Instructions for Generators” on Copy 4;

(B) The “Instructions for International Shipment Block” and “Instructions for Transporters” on Copy 3; and

(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 2.

10. Section 262.42 is amended revising paragraphs (a), (b), and (c)(2), and adding paragraphs (d) and (e) to read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §261.31 or 261.33(e) in a calendar month, who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 40 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine

the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §261.31 or §261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 50 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

(c) ***

(2) The 40/50/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(d) Legal equivalence to paper Exception Reports. Electronic Exception Reports that are prepared in accordance with § 262.42(a)(2) for large quantity generators or § 262.42(b) for small quantity generators and used in accordance with this section in lieu of paper Exception Reports are the legal equivalent of paper Exception Reports bearing handwritten signatures, and satisfy

for all purposes any requirement in these regulations to complete, sign, provide, and retain an exception report.

(1) Any requirement in these regulations to sign an Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send an Exception Report to the EPA Regional Administrator is satisfied when an electronic Exception Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of an Exception Report is satisfied by retention of a signed electronic Exception Report in the generator's account on the national e-Manifest system, provided that the Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator may be held liable for the inability to produce an electronic Exception Report for inspection under this section if the generator can demonstrate that the inability to produce the electronic Exception Report is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

(e) Restriction on use of electronic exception reporting. A generator may participate in electronic exception reporting if:

(1) The manifest at issue is an electronic manifest or a hybrid manifest (mixed paper and electronic manifest) in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) For mixed paper and electronic manifests (i.e., hybrid manifests), the generator has registered with EPA and has access to the electronic manifests for the site.

11. Section 262.83 is amended by:

a. Revising paragraphs (a)(6), (b)(1)(i) through (iv), (b)(3), (c), (d)(2)(i) through (v), (viii), (ix), and (xv);

- b. Adding paragraph (d)(2)(xvi),
- c. Revising paragraphs (f)(4), (5), (6)(ii), (g), (i)(1)(v) and
- d. Adding paragraph (i)(1)(vi).

The revisions and additions read as follows:

§ 262.83 Exports of hazardous waste.

(a) * * *

(6) The exporter or a U.S. authorized agent submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(b) ***

(1) ***

(i) Exporter name and EPA identification number, site address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), site address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); site address, telephone, fax, and email address;

* * * * *

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the

interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC3, or interim disposal operations D13 to D14, or D15, the notification submitted according to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility name, site address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC1 to RC2, D1 through D12, and DC1 to DC2 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in §262.81.

* * * * *

(c) *RCRA manifest instructions for export shipments.* The exporter must comply with the manifest requirements of §§262.20 through 262.25 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), the exporter must:

(i) check the export box;

(ii) enter the exporter's EPA ID number and email address;

(iii) enter the U.S. port of exit (city and state) from the United States; and

(iv) list the waste stream consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use an additional Continuation Sheet(s) (EPA Form 8700-22A).

(3) The exporter may obtain the manifest from any source so long as the source of the printed form has received approval from EPA to print the manifest in accordance with § 262.21(g)(1) of this part.

(4) Within 30 days of receiving an export manifest from the final domestic transporter to carry the export shipment to or across the U.S. port of exit, the exporter must submit the top copy (Page 1) of the signed and dated manifest (both and electronic and paper) and all continuation sheets (both electronic and paper) to the e-Manifest system. The exporter must submit the paper manifest and all paper continuation sheets to the e-Manifest system for purposes of data entry and processing by transmitting to the EPA system an image file of Page 1 of the manifest and all continuation sheets, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and all continuation sheets.

(5) Imposition of user fee for manifest submission. (i) As prescribed in §265.1311, and determined in §265.1312, an exporter who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in §265.1313.

(ii) An exporter subject to user fees under this section shall make user fee payments in accordance with the requirements of §265.1314, subject to the informal fee dispute resolution process of §265.1316, and subject to the sanctions for delinquent payments under §265.1315.

(6) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in §262.25 of this chapter.

(7) Special procedures applicable to replacement manifests. Within 30 days of receiving a paper replacement manifest from the last transporter carrying the shipment to or across the U.S. border for a manifest that was originated electronically, the exporter must send a signed and dated copy of the paper replacement manifest to the e-Manifest system,

(8) Post-receipt manifest data corrections. After foreign facilities have certified to the receipt of hazardous wastes by sending a copy of the movement document to the exporter per paragraph (d)(2)(xvii) of this section, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.*, domestic waste handler) shown on the manifest.

(i) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in e-Manifest system for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(ii) Each correction submission must include the following information:

(A) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(B) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(C) For each Item Number with corrected data, the data previously entered, and the corresponding data as corrected by the correction submission.

(iii) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(A) The certification statement must be executed with a valid electronic signature under CROMERR section 3.10; and

(B) A batch upload of data corrections may be submitted under one certification statement.

(iv) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(v) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the e-Manifest system, certified by the respondent as specified in paragraph (c)(7)(iii) of this section, and with notice of the corrections to other interested persons shown on the manifest.

(d) ***

(2) ***

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s) and if required to be accompanied by a RCRA Uniform Hazardous Waste Manifest within the United States, the manifest tracking number from block 4;

(ii) The shipment number and the total number of shipments from the EPA AOC or the movement tracking number;

(iii) Exporter name and EPA identification number, site address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), site address, telephone, fax numbers, and email address;

* * * * *

(viii) Name (if not exporter), site address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, site address, telephone, fax, and email address of all transporters;

* * *

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, and to the competent authorities of the countries of import and transit that control the shipment as an import and transit of hazardous waste respectively. For shipments occurring on or after the electronic import-export reporting compliance date, the exporter must

(A) Initiate the movement document using the allowable methods listed in paragraph (b)(1) of this section; and

(B) Close out the movement document within three working days of receiving a copy of the

signed movement document sent from the foreign receiving facility to confirm receipt using the allowable methods listed in paragraph (b)(1) of this section;

(xvi) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. If the movement includes shipment to a foreign interim receiving facility, the exporter must additionally require that the interim receiving facility promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, DC1 or DC2 as defined in §262.81 to the competent authority of the country of import and to the exporter. For shipments occurring on or after the electronic import-export reporting compliance date, the exporter must submit each confirmation of recovery or disposal to EPA within three working days of receiving the confirmation of recovery or disposal from the foreign receiving facility using the allowable methods listed in paragraph (b)(1) of this section; and

(xvii) for shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of receipt and the confirmation of recovery or disposal may be sent via the electronic exchange.

(f) ***

(3) ***

(iii) Transmittals made by the transporter or foreign receiving facility under paragraph (i) of this section being sent to the exporter or EPA from a country with which EPA has established

an electronic exchange of movement document tracking data may be sent via the electronic exchange.

* * * * *

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit that control the shipment as an import and transit of hazardous waste respectively. For shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of receipt may be sent via the electronic exchange.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import that controls the shipment as an import of hazardous waste. For shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of recovery or disposal may be sent via the electronic exchange.

(6) * * *

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, DC1 or DC2 to the competent authority of the country of import that controls the shipment as an import of hazardous waste and to the exporter. For shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of recovery or disposal may be sent via the electronic exchange.

* * * * *

(g) *Annual reports.* The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. The exporter must submit annual reports to EPA using the allowable methods specified in paragraph (b)(1) of this section. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

* * * * *

(i) ***

(1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (vi) of this section and provide them to EPA or authorized state personnel upon request:

(v) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(vi) A copy of each manifest sent by the last transporter in the United States per §263.20(g).

* * * * *

12. Amend § 262.84 by:

- a. Revising paragraphs (b)(1)(i) through (iv), (b)(2), (c)(1)(i) and (c)(3);
- b. Removing paragraph (c)(4);
- c. Redesignating paragraph (c)(5) as new paragraph (c)(4);
- d. Revising paragraphs (d)(2)(i), (ii) through (v), (viii) through (ix), (xv),
- e. Adding paragraph (f)(4)(iii), and
- f. Revising paragraphs (g)(1), and (2).

The revisions and additions to read as follows:

§ 262.84 Imports of hazardous waste.

(b) ***

(1) ***

(i) Foreign exporter name, site address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, site address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); site address, telephone, fax, and email address;

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12, R13 or RC3 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, site address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11, RC1, and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in §262.81.

(c) ***

(1) ***

(i) In place of the generator's name, mailing and site addresses and EPA identification number, the name and site address of the foreign generator and the importer's name, mailing address and EPA identification number must be used.

*** **

(3) In the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), the importer must check the import box and enter the port of entry (city and State) into the United States.

(4) In lieu of the requirements of §262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

* * * * *

(d) * * *

(2) * * *

(i) The corresponding AOC number(s) and waste number(s) for the listed waste and if required to be accompanied by a RCRA uniform hazardous waste manifest within the United States, the manifest tracking number from block 4;(ii) The shipment number and the total number of shipments under the AOC number or the movement tracking number;
(iii) Foreign exporter name, site address, telephone, fax numbers, and email address;
(iv) Receiving facility name, EPA ID number, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, site address, telephone, fax numbers, and email address;

* * * * *

(viii) Name (if not the foreign exporter), site address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, site address, telephone, fax, and email address of

all transporters;

* * * * *

(ix) Company name, EPA ID number (for transporters carrying RCRA manifested hazardous waste within the U.S. only), address, telephone, fax, and email address of all transporters;

* * * * *

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export.

(f) * * *

(4) * * *

(iii) Transmittals made by the transporter or receiving facility under paragraph (i) of this section being sent to a competent authority or foreign exporter in a country with which EPA has established an electronic exchange of movement document tracking data may be sent via the electronic exchange.

* * * * *

(g) *Confirmation of recovery or disposal.* The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as

possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1 to RC2, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in §262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

13. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922 - 6925, 6937, 6938, and 6939g.

14. Section 263.20 is amended by revising paragraphs (a)(2), (c), (g)(1), (3), and removing paragraph (g)(4) to read as follows.

§263.20 The manifest system.

(a)***

(2) *Exports.* For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and a movement document that includes all information required by 40 CFR 262.83(d).

(c) The transporter must ensure that the manifest accompanies the hazardous waste. For exports, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.83(d) also accompanies the hazardous waste. For imports, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.84(d) also accompanies the hazardous waste.

(g) ***

(1) Date the manifest in the International Shipments block on the Continuation Sheet(s) to indicate the date that the shipment left the United States or has been delivered to a seaport of exit for loading onto an international carrier;

* * * * *

(3) Return signed, top copies of the manifest and continuation sheet to the exporter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

15. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

16. Section 264.12 is amended by revising paragraphs (a)(2), (a)(4)(i) and (ii) to read as follows:

§264.12 Required notices.

(a)***

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system for which the owner or operator of a facility bears no responsibility.

* * * * *

(4) ***

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * * *

17. Section 264.71 is amended by revising paragraphs (a)(2)(iv), and (v), (a)(3)(i) and (ii), (b)(4) and (d) to read as follows:

§264.71 Use of manifest system.

(a) * * *

(2) * * *

(iv) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system;

(v) Paper manifest submission requirements are:

(A) [Reserved]

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the e-Manifest system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date; of delivery; and

(3) ***

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use an additional Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b)* * *

(4) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system; and

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

18. Section 264.72 is amended by revising paragraph (c) to read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 20 days after receiving the waste, the owner or operator must immediately submit to the EPA Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a Discrepancy Report.

(2) Any requirement in these regulations to give, provide, or submit a copy of the Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of a Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Report in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce an electronic Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic Discrepancy Report is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

19. Section 264.76 is revised to read as follows:

§ 264.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by §263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

- (1) The EPA identification number, name and address of the facility;
- (2) The date the facility received the waste;
- (3) The EPA identification number, name and address of the generator and the terminal [or final] transporter, if available;
- (4) A description and the quantity of each unmanifested hazardous waste the facility received;
- (5) The method of treatment, storage, or disposal for each hazardous waste;
- (6) The certification signed by the owner or operator of the facility or his authorized representative; and,
- (7) A brief explanation of why the waste was unmanifested, if known.

(b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions.

20. Section 264.1310 is amended by revising the definition of “Paper manifest submissions” to read as follows:

§ 264.1310 Definitions applicable to the subpart.

* * * * *

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700-22, or a paper Continuation Sheet, EPA Form 8700-22A. Such submissions may be made by submitting image files from paper manifests or continuation sheets in accordance with §264.1311(b), or by submitting both an image file and data file in accordance with the procedures of §264.1311(c).

* * * * *

21. Section 264.1311 is amended by revising paragraph (a)(2), adding paragraph (4), revising paragraph (b) introductory text, and (c) introductory text to read as follows:

§264.1311 Manifest transactions subject to fees.

(a) * * *

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by the upload of an image file or by the upload of a data file representation of the paper manifest; and

* * *

(4) The submission of unmanifested waste reports per §264.76.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

* * *

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests

received at the facility.

* * * * *

22. Section 264.1312 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§264.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t} \right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e - Manifest\ System\ Related\ Services$$

Where Fee_i represents the per manifest fee for each manifest submission type “i” and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M_i\ Cost}{N_i} \right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic}\ Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e - Manifest\ System\ Related\ Services$$

$$O\&M_{all\ other}\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e - Manifest\ System\ Related\ Services$$

Where N_i refers to the total number of one of the four manifest submission types “i” completed in a year and $O\&M_i\ Cost$ refers to the differential O&M Cost for each manifest submission type

“i.”

* * * * *

PART 265 - INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

23. The authority citation for part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

24. Section 265.12 is amended by revising paragraphs (a)(2), (a)(4)(i) and (ii), to read as follows:

§265.12 Required notices.

(a)***

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state

inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

(4) ***

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS

or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * *

25. Amend § 265.71 by:

- a. Revising paragraphs (a)(2)(iv), (v);
- b. Adding (a)(2)(vi); and
- c. Revising paragraphs (a)(3)(i), (ii), (b)(4), and (d).

The revisions and additions read as follows:

§265.71 Use of manifest system.

(a) * * *

(2) * * *

(iv) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system;

(v) Paper manifest submission requirements are:

(A) [Reserved]

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the e-Manifest system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery.; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) * * *

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use an additional Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Send a copy of the manifest to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b) * * *

(4) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system.

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if

requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

26. Section 265.72 is amended by revising paragraph (c) to read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 20 days after receiving the waste, the owner or operator must immediately submit to the EPA Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a Discrepancy Report.

(2) Any requirement in these regulations to give, provide, or submit a copy of the Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of a Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Report

in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce an electronic Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic discrepancy report is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

27. Section 265.76 is revised to read as follows:

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by §263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

- (1) The EPA identification number, name and address of the facility;
 - (2) The date the facility received the waste;
 - (3) The EPA identification number, name and address of the generator and the terminal [or final] transporter, if available;
 - (4) A description and the quantity of each unmanifested hazardous waste the facility received;
 - (5) The method of treatment, storage, or disposal for each hazardous waste;
 - (6) The certification signed by the owner or operator of the facility or his authorized representative; and,
 - (7) A brief explanation of why the waste was unmanifested, if known.
- (b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested

Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions.

28. Section 265.1310 is amended by revising the definition of “Paper manifest submissions” to read as follows:

§ 265.1310 Definitions applicable to the subpart.

* * * * *

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700-22, or a paper Continuation Sheet, EPA Form 8700-22A. Such submissions may be made by submitting image files from paper manifests or continuation sheets in accordance with §264.1311(b) of this title, or by submitting both an image file and data file in accordance with the procedures of §264.1311(c) of this title.

* * * * *

29. Section 265.1311 is amended by revising paragraph (a)(2), adding paragraph (4), revising (b) introductory text, and (c) introductory text to read as follows:

§265.1311 Manifest transactions subject to fees.

(a)* * *

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by the upload of an image file or by the upload of a data file representation of the paper manifest; and

* * * * *

(4) Unmanifested waste reports per §265.76.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

* * * * *

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

* * * * *

30. Section 265.1312 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 265.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t} \right) \times (1 + Indirect\ Cost\ Factor)$$

System Setup Cost = Procurement Cost + EPA Program Cost

O&M Cost
= Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost
+ EPA Program Cost + CROMERR Cost
+ LifeCycle Cost to Modify or Upgrade e – Manifest System Related Services

Where Fee_i represents the per manifest fee for each manifest submission type “i” and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(\text{Marginal Cost}_i + \frac{\text{System Setup Cost}}{\text{Years} \times N_t} + \frac{O\&M_i \text{ Cost}}{N_i} \right) \times (1 + \text{Indirect Cost Factor})$$

System Setup Cost = Procurement Cost + EPA Program Cost

O&M_{fully electronic}

*Cost = Electronic System O&M Cost + Help Desk Cost + EPA Program Cost +
+ CROMERR Cost
LifeCycle Cost to Modify or Upgrade e – Manifest System Related Services*

O&M_{all other}

*Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost +
+ EPA Program Cost + CROMERR Cost
LifeCycle Cost to Modify or Upgrade e – Manifest System Related Services*

Where N_i refers to the total number of one of the four manifest submission types “*i*” completed in a year

and $O\&M_i \text{ Cost}$ refers to the differential O&M Cost for each manifest submission type “*i*.”

PART 267 - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

31. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924-6926, and 6930.

32. Section 267.71 is amended by revising paragraphs (a)(6)(i), (ii), and (d) to read as follows:

§267.71 Use of the manifest system.

(a)***

(6) ***

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700-22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the receiving facility should use an additional Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) submit a copy of the manifest to the e-Manifest system per 40 CFR 264.71(a)(2)(v) or 265.71(a)(2)(v).

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS, or its successor system, to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

PART 271 - REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

33. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

34. Section 271.1 paragraph (j)(2) is amended by adding an entry to Table 1 in chronological order by “Promulgation date” and adding an entry to Table 2 in chronological order by “Effective date”.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *			
<i>[Date of publication of final rule in the Federal Register (FR)].</i>	E-manifest user fees for hazardous waste exporters, and related export/import revisions	<i>[FR page numbers]</i>	<i>[Date of X months from date of publication of final rule].</i>

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * *			
<i>[Date X days after of publication of final rule in the Federal Register (FR)].</i>	E-manifest user fees for hazardous waste exporters, and related export/import revisions	3017	<i>[Federal Register citation].</i>

35. Section 271.10 is amended by adding paragraph (j) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(j) The State shall have standards for hazardous generators and exporters which are equivalent to 40 CFR part 262. These standards shall include

(1) Compliance with the manifest system including the requirements that the:

(i) generator submits electronic Exception Reports to the e-Manifest system; and

(ii) exporter submits a signed copy of the manifest and continuation sheet to the EPA's e-Manifest system.

(A) After listing the relevant consent number from consent documentation supplied by EPA to the exporter for each waste listed on the manifest, matched to the relevant list number for the waste from Item 9b to EPA using the allowable methods listed in 40 CFR 262.83(b) until the facility can submit such a copy to the e-Manifest system per 40 CFR 262.83(c)(4); and

(iii) exporter pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 265, for all paper and electronic manifests submitted to the e-Manifest system.

36. Section 271.12 is amended by adding paragraphs (i)(4), (5) and revising paragraph (k) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(4) Requirements for owners and operators of facilities to submit electronic Discrepancy Reports to the e-Manifest system; and

(5) Requirements for owners and operators to submit electronic Unmanifested Waste Reports to the e-Manifest system.

(k) Requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR

parts 264 and 265, for all paper and electronic manifests and electronic Unmanifested Waste Reports submitted to the e-Manifest system.

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

37. The authority citation for part 761 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616 and 42 U.S.C. 6939g.

38. Section 761.3 is amended by adding the definition “Electronic manifest” in alphabetical order to read as follows:

§ 761.3 Definitions.

* * * * *

Electronic manifest means the electronic equivalent of the manifest (which is defined in this section as the shipping document EPA form 8700-22 and any continuation sheet attached to EPA form 8700-22, originated and signed by the generator of PCB waste in accordance with the instructions included with the form, and subpart K of this part), and also in accordance with §§ 262.20, 262.24, and 262.25.

* * * * *

Subpart D—Storage and Disposal

39. Section 761.60 is amended by revising paragraph (e) to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(e) Any person who is required to incinerate any PCBs and PCB items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB items exists and that this alternative method can achieve a level of performance equivalent to an incinerator approved under §761.70 or a high efficiency boiler operating in compliance with §761.71, must submit a written request to the EPA Regional Administrator or the Director, Office of Resource Conservation and Recovery, for a waiver from the incineration requirements of §761.70 or

§761.71. Requests for approval of alternate methods that will be operated in more than one Region must be submitted to the Director, Office of Resource Conservation and Recovery, except for research and development activities involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one Region must be submitted to the appropriate EPA Regional Administrator. The applicant must show that his or her method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, EPA may, in its discretion, approve the use of the alternate method if it finds that the alternate disposal method provides PCB destruction equivalent to disposal in a §761.70 incinerator or a §761.71 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may include such conditions and provisions as EPA deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination. No person may use the alternate method of destroying PCBs or PCB items prior to obtaining permission from the appropriate EPA official.

* * * * *

40. Section 761.180 is amended by revising paragraph (b)(3) to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(b) * * *

(3) The owner or operator of a PCB disposal facility (including an owner or operator who disposes of their own waste and does not receive or generate manifests) or a commercial storage facility shall submit an annual report using EPA Form 6200-025, which briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1)

and (2) of this section to the Director, Office Resource Conservation and Recovery in accordance with the instructions on the form by July 15 of each year, beginning with July 15, 1991. The first annual report submitted on July 15, 1991, shall be for the period starting February 5, 1990, and ending December 31, 1990. The annual report shall contain no confidential business information. The annual report shall consist of the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.

* * * * *

41. Section 761.205 is amended by revising paragraph (d) to read as follows:

§ 761.205 Notification of PCB waste activity (EPA Form 7710-53).

* * * * *

(d) Persons required to notify under this section shall file EPA Form 7710-53 with EPA in accordance with the instructions on the form.

* * * * *

42. Section 761.207 is amended by adding paragraph (g) to read as follows:

§ 761.207 The manifest—general requirements.

* * * * *

(g)(1) A person required to prepare a manifest under § 761.207 may prepare and use an electronic manifest, provided that the person:

- (i) Complies with the requirements in § 262.24 for use of electronic manifests, and
- (ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(2) Legal Equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with §§ 761.208 and 262.20(a)(3), and used in accordance with sections 262.20, 262.24, and 262.25 in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or

retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of § 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iii) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(iv) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

(v) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. A generator, transporter, or commercial storage or disposal facility may participate electronically in the post-receipt data corrections process by following the process described in §265.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

43. Section 761.209 is revised to read as follows:

§ 761.209 Number of copies of a manifest.

The manifest consists of at least the number of copies which will provide the generator, the transporter, and the owner or operator of the designated facility with one copy each for their records and a copy to be submitted to the e-Manifest system as indicated in the instructions

included with EPA form 8700-22. Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system. All parties using electronic manifests must do so in accordance with §§ 262.20, 262.24, and 262.25.

44. Section 761.210 is amended by revising paragraphs (a) introductory text, (a)(1) and (2) of to read as follows:

§ 761.210 Use of the manifest – Generator requirements.

(a) The generator must:

(1) Sign the manifest certification; and

(2) Obtain the signature of the initial transporter and date of acceptance on the manifest;

and

* * * * *

45. Section 761.211 is amended by revising paragraphs (d)(1), (e)(3), and (f)(3)(i), (f)(4)(i) and adding paragraph (g) to read as follows:

§ 761.211 Manifest system – Transporter requirements.

* * * * *

(d) * * *

(1) Obtain the date of delivery and the signature of that transporter or of the owner or operator of the designated facility on the manifest; and

* * * * *

(e) * * *

(3) The delivering transporter obtains the date of delivery and signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(f) * * *

(3) * * *

(i) Obtain the date of delivery and signature of the owner or operator of the designated

facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

* * * * *

(4) * * *

(i) Obtain the date of delivery and the signature of the next non-rail transporter on the manifest; and

* * * * *

(g) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then the transporter must follow the replacement manifest procedures in accordance with § 263.20(a)(6).

46. Section 761.213 is amended by revising paragraph (a)(2)(i) and adding paragraphs (d) and (e) to read as follows:

§ 761.213 Use of manifest – Commercial storage and disposal facility requirements.

(a) * * *

(2) * * *

(i) Sign and date each copy of the manifest;

* * * * *

(d)) Special procedures applicable to replacement manifests. If a commercial storage or disposal facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the facility must follow the replacement manifest procedures in accordance with § 265.71(h).

(e) Imposition of user fee for manifest submissions. (1) As prescribed in § 265.1311, and determined in § 265.1312, a commercial storage or disposal facility who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish

them to the user community, as provided in §265.1313.

(2) A commercial storage or disposal facility subject to user fees under this section shall make user fee payments in accordance with the requirements of §264.1314, subject to the informal fee dispute resolution process of §264.1316, and subject to the sanctions for delinquent payments under §264.1315.

47. Section 761.215 is amended by adding paragraphs (c)(1) through (4) and revising (f)(6) to read as follows:

§ 761.215 Manifest discrepancies.

(c)* * *

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a discrepancy report.

(2) Any requirement in these regulations to give, provide, or send a Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is transmitted to the EPA by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of each Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Reports in its account on the e-Manifest system, provided that such Discrepancy Reports are readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce a Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the

inability to produce the electronic Discrepancy Report is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

(f) * * *

(6) Sign the Generator's/Officer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail, or submit electronically through the e-Manifest system, a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

39. Section 761.216 is amended by revising paragraph (a) introductory text and adding paragraph (b) to read as follows:

§ 761.216 Unmanifested waste report.

(a) If a facility accepts for storage or disposal any PCB waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described by § 761.211(e), and the owner or operator of the commercial storage or disposal facility cannot contact the generator of the PCB waste, then they shall notify the Regional Administrator of the EPA region in which their facility is located of the unmanifested PCB waste so that the EPA Regional Administrator can determine whether further actions are required before the owner or operator may store or dispose of the unmanifested PCB waste, and additionally the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA Regional Administrator within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

* * * * *

(b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of

receiving facilities, with the fee assessed at the applicable rate per 40 CFR part 265.1312 for electronic manifest submissions.

40. Section 761.217 is amended by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§ 761.217 Exception reporting.

(a)(1) A generator of PCB waste, who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 40 days of the date the waste was accepted by the initial transporter, shall immediately contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

* * * * *

(c) Legal equivalence to paper exception reports. Electronic Exception Reports that are originated in the e-Manifest system in accordance with paragraph (a) of this section and used in accordance with this section in lieu of paper Exception Reports are the legal equivalent of paper Exception Reports bearing handwritten signatures and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain an Exception Report.

(1) Any requirement in these regulations to sign an Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send an Exception Report to the EPA Regional Administrator is satisfied when an electronic Exception Report is transmitted to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of an Exception Report is satisfied by retention of a signed electronic Exception Report in the generator's account on the national e-Manifest system, provided that the Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator may be held liable for the inability to produce an electronic Exception Report for inspection under this section if the generator can demonstrate that the inability to produce the electronic Exception Report is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

* * * * *

41. Section 761.218 is amended by adding paragraphs (e) and (f) to read as follows:

§ 761.218 Certificate of disposal.

* * * * *

(e) Legal equivalence to paper certificates of disposal. Electronic certificates of disposal that are originated in an EPA-approved electronic system in accordance with this section and used in accordance with this section in lieu of paper certificates of disposal are the legal equivalent of paper certificates of disposal bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain a certificate of disposal.

(1) Any requirement in these regulations to sign a certificate of disposal by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send a certificate of disposal to the EPA Regional Administrator is satisfied when an electronic certificate of disposal is transmitted to the EPA Regional Administrator by submission to an EPA-approved electronic system.

(3) Any requirement in these regulations for a generator or disposer to keep or retain a copy of a certificate of disposal is satisfied by retention of a signed electronic certificate of disposal in the generator's or disposer's account, respectively, on an EPA-approved electronic system, provided that the certificate of disposal is readily available for viewing and production if

requested by any EPA or authorized state inspector.

(4) No generator or disposer may be held liable for the inability to produce an electronic certificate of disposal for inspection under this section if the generator or disposer can demonstrate that the inability to produce the electronic certificate of disposal is due exclusively to a technical difficulty with the EPA-approved electronic system for which the generator or disposer bears no responsibility.

(f) Restriction on use of electronic certificates of disposal. The owner or operator of a disposal facility may participate in electronic certificates of disposal if it is known at the time the certificate of disposal is originated that:

(1) the manifest at issue originated in the e-Manifest system in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) for mixed paper and electronic manifests (i.e., hybrid manifests), the generator has registered in the e-Manifest system and has access to the electronic manifests for the site.

42. Section 761.219 is amended by adding paragraphs (e) and (f) to read as follows:

§ 761.219 One-year exception reporting.

* * * * *

(e) Legal equivalence to paper One-year Exception Reports. Electronic One-year Exception Reports that are originated in an EPA-approved electronic system in accordance with paragraph (a) of this section and used in accordance with this section in lieu of paper One-year Exception Reports are the legal equivalent of paper One-year Exception Reports bearing handwritten signatures and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain a One-year exception report.

(1) Any requirement in these regulations to sign a One-year Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send a One-year Exception

Report to the EPA Regional Administrator is satisfied when a One-year electronic Exception Report is transmitted to the EPA Regional Administrator by submission to an EPA-approved electronic system.

(3) Any requirement in these regulations for a generator or disposer to keep or retain a copy of a One-year Exception Report is satisfied by retention of a signed electronic One-year Exception Report in the generator's or disposer's respective account on an EPA-approved electronic system, provided that the One-year Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator or disposer may be held liable for the inability to produce an electronic One-year Exception Report for inspection under this section if the generator or disposer can demonstrate that the inability to produce the electronic One-year Exception Report is due exclusively to a technical difficulty with the EPA-approved electronic system for which the generator or disposer bears no responsibility.

(f) Restriction on use of electronic One-year Exception Reporting. A generator or disposer may participate in electronic One-year Exception Reporting if it is known at the time the One-year Exception Report is originated that:

(1) the manifest at issue originated in the e-Manifest system in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) for mixed paper and electronic manifests (i.e., hybrid manifests), the generator has registered in the e-Manifest system and has access to the electronic manifests for the site.

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